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CHAPTER 772

An act to add Section 1596.653 to the Health and Safety Code, relating to transport escort services.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1596.653 is added to the Health and Safety Code, to read:

1596.653. (a) It is the intent of the Legislature to protect the well-being of California children by regulating private individuals and companies that transport or accompany minors to out-of-state residential facilities or institutions.

(b) As used in this section:

(1) "Transport escort service" means any person, partnership, association, or corporation that accepts financial compensation or other consideration to accompany or transport minors who are residents of California to any residential facility or institution located outside the state.

(2) "Minor" means any person under the age of 18 years.

(3) "Department" means the State Department of Social Services.

(c) Every transport escort service that accompanies or transports a minor who is a resident of California to any residential facility or institution located outside the state, shall first provide the minor's parents, custodial parent, or legal guardian with all of the following:

(1) A description of the child care provider trustline registry established pursuant to this chapter that provides criminal history checks on child care providers.

(2) An explanation of how a parent may obtain more information about the child care provider trustline registry.

(3) A statement that a transport escort service is prohibited by law from transporting or accompanying a minor unless the person or persons transporting the minor are trustline registered child care providers.

(4) An explanation of how the parent may verify the trustline registration of the transport escort service.

(5) An explanation of the minor's right to make a complaint to a child protective agency concerning abusive treatment by the transport escort service.

(d) A transport escort service shall not transport or accompany a minor without obtaining the written permission of the minor's parents, custodial parent, or legal guardian.

(e) The transport escort service shall verify in writing that the minor's parents, custodial parent, or legal guardian has received the information required under subdivision (c).

(f) A transport escort service shall not accompany or transport a minor to any residential facility or institution located outside the state, unless the person or persons transporting or accompanying the minor are trustline registered child care providers.

(g) A minor, parent, or legal guardian claiming to be aggrieved by a violation of this section by a transport escort service may bring a civil action for injunctive relief or damages, or both.

(h) In addition to the remedy provided in subdivision (g), a violation of this section may be prosecuted as a misdemeanor punishable by a fine of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) as to each person with respect to whom a violation occurs, or imprisonment in a county jail for not more than six months.

(i) This section does not apply to the following:

(1) The transport of minors by any governmental agency or employee.

(2) The transport of minors under the jurisdiction of the juvenile court.

(3) The transport of minors by family members or relatives.

(j) Nothing in this section shall limit any claim for damages or the issuance of any injunction that a parent or child may assert against a transport escort service pursuant to any other state or federal law or regulation.

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 773

An act to add Chapter 2.9 (commencing with Section 53398) to Part 1 of Division 2 of Title 5 of the Government Code, relating to infrastructure financing districts.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Chapter 2.9 (commencing with Section 53398) is added to Part 1 of Division 2 of Title 5 of the Government Code, to read:

CHAPTER 2.9. INFRASTRUCTURE FINANCING DISTRICTS IN THE BORDER DEVELOPMENT ZONE

Article 1. General Provisions

53398. (a) The Legislature finds and declares that the North American Free Trade Agreement has resulted in a dramatic increase in trade with Mexico. In 1998 companies in California exported over $13.3 billion worth of goods to Mexico, and more than 80,000 jobs throughout the state are the direct result of this trade. This increased trade has strained the inadequate public infrastructure in the region just north of the international border.

(b) The Legislature further finds and declares that there is a significant opportunity for industrial development, including high technology and biotechnology manufacturing, in the region along the border. However, this region lacks the public infrastructure necessary to support new development or to provide for the rapid and reliable delivery of supplies to, and distribution of products from, companies throughout the state.

(c) The Legislature finds and declares that the state and federal governments have withdrawn in whole or in part from their former role in financing infrastructure facilities, including highways, roads and interchanges, sewage facilities and water reclamation works, water supply and treatment works, flood control and drainage works, schools, libraries, parks, parking facilities, open space, and seismic retrofit and rehabilitation of public facilities.

(d) The Legislature further finds and declares that the methods available to local agencies to finance public works often place an undue and unfair burden on buyers of new homes, especially for public works that benefit the broader community.

(e) The Legislature further finds and declares that the absence of practical and equitable methods for financing both regional and local public works leads to a declining standard of public works, a failure to construct new public works needed to support new commercial and industrial development in the region along the border, a reduced quality of life and decreased safety for affected citizens, increased objection to otherwise desirable development, and excessive costs for homebuyers.

(f) The Legislature further finds and declares that it is equitable and in the public interest to provide alternative procedures for financing public works and services needed to support new commercial and industrial development in the region along the

border that would generate significant new employment opportunities.

53398.1. Unless the context otherwise requires, the definitions contained in this article shall govern the construction of this chapter.

(a) "Affected taxing entity" means any governmental taxing agency that levied or had levied on its behalf a property tax on all or a portion of the property located in the proposed district in the fiscal year prior to the designation of the district, but not including any county office of education, school district, community college district, or the Educational Revenue Augmentation Fund.

(b) "Border development zone" means a strip of land three miles wide with the international border with Mexico on the south, the mean high tide of the Pacific Ocean on the west, and the border with the State of Arizona on the east.

(c) "City" means a city, a county, or a city and county.

(d) "Debt" means any binding obligation to repay a sum of money, including obligations in the form of bonds, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals.

(e) "Designated official" means the city engineer or other appropriate official designated pursuant to Section 53398.13.

(f) "District" means an infrastructure financing district located in the border development zone.

(g) "Infrastructure financing district" means a legally constituted governmental entity established pursuant to this chapter for the sole purpose of financing public facilities.

(h) "Landowner" or "owner of land" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of the land by the legislative body. The legislative body has no obligation to obtain other information as to the ownership of land, and its determination of ownership shall be final and conclusive for the purposes of this chapter. A public agency is not a landowner or owner of land for purposes of this chapter.

(i) "Legislative body" means the city council or board of supervisors.

53398.2. (a) The revenues available pursuant to Article 3 (commencing with Section 53398.30) may be used directly for work allowed pursuant to Section 53398.3 (including use as matching funds to accomplish this work), may be accumulated for a period not to exceed five years to provide a fund for that work, may be pledged to pay the principal of, and interest on, bonds issued pursuant to Article 4 (commencing with Section 53398.40), or may be pledged to pay the principal of, and interest on, bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) or the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311)), the proceeds of which have been or will be used

entirely for allowable purposes of the district. The revenue of the district may also be advanced for allowable purposes of the district to an Integrated Financing District established pursuant to Chapter 1.5 (commencing with Section 53175), in which case the district may be party to a reimbursement agreement established pursuant to that chapter. The revenues of the district may also be committed to paying for any completed public facility acquired pursuant to Section 53398.3 over a period of time, including the payment of a rate of interest not to exceed the bond buyer index rate on the day that the agreement to repay is entered into by the city.

(b) The legislative body may enter into an agreement with any affected taxing entity providing for the construction of, or assistance in, financing public facilities.

53398.3. (a) A district may finance (1) the purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or other tangible property with an estimated useful life of 15 years or longer that satisfies the requirements of subdivision (b), (2) the planning and design work that is directly related to the purchase, construction, expansion, or rehabilitation of that property, and (3) the costs described in Sections 53398.5 and 53398.31. A district may only finance the purchase of facilities for which construction has been completed, as determined by the legislative body. The facilities need not be physically located within the boundaries of the district. A district may not finance routine maintenance, repair work, or the costs of ongoing operation or providing services of any kind.

(b) The district shall finance only public capital facilities that provide significant benefits to the area of the border development zone, including, but not limited to, all of the following:

(1) Highways, interchanges, ramps and bridges, major and minor arterial streets, major and minor collector streets, parking facilities, and transit facilities. Phased road widening projects shall also be permitted.

(2) Sewage collection, pumping, treatment and water reclamation plants and interceptor pipes.

(3) Facilities for the collection and treatment of water for urban uses.

(4) Flood control levees and dams, retention basins, and drainage facilities.

(5) Child care facilities.

(6) Libraries.

(7) Parks, recreational facilities, and open space.

(8) Facilities for the transfer and disposal of solid waste, including transfer stations and vehicles.

(c) Any district that constructs dwelling units shall set aside not less than 20 percent of those units to increase and improve the community's supply of low- and moderate-income housing available at an affordable housing cost, as defined by Section 50052.5 of the

Health and Safety Code, to persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code.

53398.4. (a) A district may not include any portion of a redevelopment project area that is or has been previously created pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, whether the creation is or was proper or improper. A redevelopment project area may not include any portion of a district created pursuant to this chapter.

(b) A district may finance only the facilities or services authorized in this chapter to the extent that the facilities or services are in addition to those provided in the territory of the district before the district was created. The additional facilities or services may not supplant facilities or services already available within that territory when the district was created but may supplement those facilities and services as needed to serve new developments.

(c) A district may include areas that are not contiguous.

53398.5. It is the intent of the Legislature that the area of the districts created be substantially undeveloped, and the establishment of a district should not ordinarily lead to the removal of existing dwelling units. If, however, any dwelling units are proposed to be removed or destroyed in the course of private development or public works construction within the area of the district, the legislative body shall do all of the following:

(a) Within four years of the removal or destruction, cause or require the construction or rehabilitation, for rental or sale to persons or families of low or moderate income, of an equal number of replacement dwelling units at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, within the territory of the district if the dwelling units removed were inhabited by persons or families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

(b) Within four years of the removal or destruction, cause or require the construction or rehabilitation, for rental or sale to persons of low or moderate income, a number of dwelling units that is at least one unit but not less than 20 percent of the total dwelling units removed at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, within the territory of the district if the dwelling units removed or destroyed were not inhabited by persons of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

(c) Provide relocation assistance and make all the payments required by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1, to persons displaced by any public or private development occurring within the territory of the district. This displacement shall be deemed to be the result of public action.

(d) Ensure that removal or destruction of any dwelling units occupied by persons or families of low or moderate income does not take place unless and until there are suitable housing units, at

comparable cost to the units from which the persons or families were displaced, available and ready for occupancy by the residents of the units at the time of their displacement. The housing units shall be suitable to the needs of these displaced persons or families and shall be decent, safe, sanitary, and otherwise standard dwellings.

53398.6. Any action or proceeding to attack, review, set aside, void, or annul the creation of a district or the adoption of an infrastructure financing plan, including a division of taxes thereunder, shall be commenced within 30 days after the enactment of the ordinance creating the district pursuant to Section 53398.21. Consistent with the time limitations of this section, such an action or proceeding with respect to a division of taxes under this chapter may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, except that Section 869 of the Code of Civil Procedure shall not apply.

53398.7. An action to determine the validity of the issuance of bonds pursuant to this chapter may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. However, notwithstanding the time limits specified in Section 860 of the Code of Civil Procedure, the action shall be commenced within 30 days after adoption of the resolution pursuant to Section 53398.43 providing for issuance of the bonds if the action is brought by an interested person pursuant to Section 863 of the Code of Civil Procedure. Any appeal from a judgment in that action or proceeding shall be commenced within 30 days after entry of judgment.

53398.8. An infrastructure financing district in the border development zone is a "district" within the meaning of Section 1 of Article XIII A of the California Constitution.

Article 2. Preparation and Adoption of Infrastructure Financing Plans

53398.10. A legislative body of a city may designate one or more proposed infrastructure financing districts in the border development zone pursuant to this chapter. Proceedings for the establishment of a district shall be instituted by the adoption of a resolution of intention to establish the proposed district and shall do all of the following:

(a) State that an infrastructure financing district is proposed to be established under the terms of this chapter and describe the boundaries of the proposed district, which may be accomplished by reference to a map on file in the office of the clerk of the city.

(b) State the type of public facilities proposed to be financed by the district. The district may only finance public facilities authorized by Section 53398.3.

(c) State that incremental property tax revenue from the city and some or all affected taxing entities within the district may be used to finance these public facilities.

(d) Fix a time and place for a public hearing on the proposal.

53398.11. The legislative body shall direct the clerk to mail a copy of the resolution of intention to create the district to each owner of land within the district.

53398.12. The legislative body shall direct the clerk to mail a copy of the resolution to each affected taxing entity.

53398.13. After adopting the resolution pursuant to Section 53398.10, the legislative body shall designate and direct the city engineer or other appropriate official to prepare an infrastructure plan pursuant to Section 53398.14.

53398.14. After receipt of a copy of the resolution of intention to establish a district, the official designated pursuant to Section 53398.13 shall prepare a proposed infrastructure financing plan. The infrastructure financing plan shall be consistent with the general plan of the city within which the district is located and shall include all of the following:

(a) A map and legal description of the proposed district, which may include all or a portion of the district designated by the legislative body in its resolution of intention.

(b) A description of the public facilities required to serve the development proposed in the area of the district, including those to be provided by the private sector, those to be provided by governmental entities without assistance under this chapter, those public improvements and facilities to be financed with assistance from the proposed district, and those to be provided jointly. The description shall include the proposed location, timing, and costs of the public improvements and facilities.

(c) A finding that the public facilities provide significant benefits to the border development zone.

(d) A financing section, which shall contain all of the following information:

(1) A specification of the maximum portion of the incremental tax revenue of the city and of each affected taxing entity proposed to be committed to the district for each year during which the district will receive incremental tax revenue. The portion need not be the same for all affected taxing entities. The portion may change over time.

(2) A projection of the amount of tax revenues expected to be received by the district in each year during which the district will receive tax revenues, including an estimate of the amount of tax revenues attributable to each affected taxing entity for each year.

(3) A plan for financing the public facilities to be assisted by the district, including a detailed description of any intention to incur debt.

(4) A limit on the total number of dollars of taxes that may be allocated to the district pursuant to the plan.

(5) A date on which the district will cease to exist, by which time all tax allocation to the district will end. The date shall not be more than 30 years from the date on which the ordinance forming the district is adopted pursuant to Section 53398.20.

(6) An analysis of the costs to the city of providing facilities and services to the area of the district while the area is being developed and after the area is developed. The plan shall also include an analysis of the tax, fee, charge, and other revenues expected to be received by the city as a result of expected development in the area of the district.

(7) An analysis of the projected fiscal impact of the district and the associated development upon each affected taxing entity.

(e) If any dwelling units occupied by persons or families of low or moderate income are proposed to be removed or destroyed in the course of private development or public works construction within the area of the district, a plan providing for replacement of those units and relocation of those persons or families consistent with the requirements of Section 53398.5.

53398.15. The infrastructure financing plan shall be sent to each owner of land within the proposed district and to each affected taxing entity together with any report required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) that pertains to the proposed public facilities or the proposed development project for which the public facilities are needed. The plan shall be made available for public inspection. The report shall also be sent to the planning commission and the legislative body.

53398.16. The designated official shall consult with each affected taxing entity, and, at the request of any affected taxing entity, shall meet with representatives of an affected taxing entity. Any affected taxing entity may suggest revisions to the plan.

53398.17. The legislative body shall conduct a public hearing prior to adopting the proposed infrastructure financing plan. The public hearing shall be called no sooner than 60 days after the plan has been sent to each affected taxing entity. In addition to the notice given to landowners and affected taxing entities pursuant to Sections 53398.11 and 53398.12, notice of the public hearing shall be given by publication not less than once a week for four successive weeks in a newspaper of general circulation published in the city in which the proposed district is located. The notice shall state that the district will be used to finance public works, briefly describe the public works, briefly describe the proposed financial arrangements, including the proposed commitment of incremental tax revenue, describe the boundaries of the proposed district, and state the day, hour, and place when and where any persons having any objections to the proposed infrastructure financing plan, or the regularity of any of the prior proceedings, may appear before the legislative body and object to the adoption of the proposed plan by the legislative body.

53398.18. At the hour set in the required notices, the legislative body shall proceed to hear and pass upon all written and oral objections. The hearing may be continued from time to time. The legislative body shall consider the recommendations, if any, of affected taxing entities, and all evidence and testimony for and against the adoption of the plan. The legislative body may modify the plan by eliminating or reducing the size and cost of proposed public works, by reducing the amount of proposed debt, or by reducing the portion, amount, or duration of incremental tax revenues to be committed to the district.

53398.19. (a) The legislative body shall not enact an ordinance approving the infrastructure financing plan providing for the division of taxes of any affected taxing entity pursuant to Article 3 (commencing with Section 53398.30) unless a resolution approving the plan has been adopted by the governing body of each affected taxing entity that is proposed to be subject to division of taxes pursuant to Article 3 (commencing with Section 53398.30) has been filed with the legislative body at or prior to the time of the hearing.

(b) Nothing in this section shall be construed to prevent the legislative body from amending its infrastructure financing plan and adopting an ordinance approving the formation of the infrastructure financing district without allocation of the tax revenues of any affected taxing entity that has not approved the infrastructure financing plan by resolution of the governing body of the affected taxing entity.

53398.20. At the conclusion of the hearing, the legislative body may, in a manner consistent with Section 53398.19, adopt an ordinance approving the infrastructure financing plan, or the infrastructure financing plan as modified, and creating the infrastructure financing district with the full force and effect of law, or the legislative body may abandon the proceedings.

53398.21. The legislative body may submit a proposition to establish or change the appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of a district to the qualified electors of a district. The proposition establishing or changing the appropriations limit shall become effective if approved by the qualified electors voting on the proposition and shall be adjusted for changes in the cost of living and changes in populations, as defined by subdivisions (b) and (c) of Section 7901, except that the change in population may be estimated by the legislative body in the absence of an estimate by the Department of Finance, and in accordance with Section 1 of Article XIII B of the California Constitution. For purposes of adjusting for changes in population, the population of the district shall be deemed to be at least one person during each calendar year.

Article 3. Division of Taxes

53398.30. Any infrastructure financing plan may contain a provision that taxes, if any, levied upon taxable property in the area included within the infrastructure financing district each year by or for the benefit of the State of California, or any affected taxing entity after the effective date of the ordinance adopted pursuant to Section 53398.20 to create the district, shall be divided as follows:

(a) That portion of the taxes that would be produced by the rate upon which the tax is levied each year by or for each of the affected taxing entities upon the total sum of the assessed value of the taxable property in the district as shown upon the assessment roll used in connection with the taxation of the property by the affected taxing entity, last equalized prior to the effective date of the ordinance adopted pursuant to Section 53398.20 to create the district, shall be allocated to, and when collected shall be paid to, the respective affected taxing entities as taxes by or for the affected taxing entities on all other property are paid.

(b) That portion of the levied taxes each year specified in the adopted infrastructure financing plan for the city and each affected taxing entity that has agreed to participate pursuant to Section 53398.19 in excess of the amount specified in subdivision (a) shall be allocated to, and when collected shall be paid into a special fund of, the district for all lawful purposes of the district. Unless and until the total assessed valuation of the taxable property in a district exceeds the total assessed value of the taxable property in the district as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the district shall be paid to the respective affected taxing entities. When the district ceases to exist pursuant to the adopted infrastructure financing plan, all moneys thereafter received from taxes upon the taxable property in the district shall be paid to the respective affected taxing entities as taxes on all other property are paid.

53398.31. All costs incurred by a county in connection with the division of taxes pursuant to Section 53398.30 for a district shall be paid by that district.

Article 4. Tax Increment Bonds

53398.40. The legislative body may, by majority vote, initiate proceedings to issue bonds pursuant to this chapter by adopting a resolution stating its intent to issue the bonds.

53398.41. The resolution adopted pursuant to Section 53398.40 shall contain all of the following information:

(a) A description of the facilities to be financed with the proceeds of the proposed bond issue.

(b) The estimated cost of the facilities, the estimated cost of preparing and issuing the bonds, and the principal amount of the proposed bond issuance.

(c) The maximum interest rate and discount on the proposed bond issuance.

(d) A determination of the amount of tax revenue available or estimated to be available, for the payment of the principal of, and interest on, the bonds.

(e) A finding that the amount necessary to pay the principal of, and interest on, the proposed bond issuance will be less than, or equal to, the amount determined pursuant to subdivision (d).

(f) The date, hour, and place at which any person may appear before the legislative body and object to the proposal to issue bonds.

53398.42. The clerk of the legislative body shall publish the resolution adopted pursuant to Section 53398.40 once a day for at least seven successive days in a newspaper published in the city or county at least six days a week, or at least once a week for two successive weeks in a newspaper published in the city or county less than six days a week.

If there are no newspapers meeting these criteria, the resolution shall be posted in three public places within the territory of the district for two succeeding weeks.

53398.43. (a) At the hour set in the required notice, the legislative body shall proceed to hear and pass upon all written and oral objections. The hearing may be continued from time to time. The legislative body shall consider all evidence and testimony for and against the proposal to issue bonds.

(b) At the conclusion of the hearing, the legislative body may approve the issuance of bonds by adopting a resolution that shall provide for all of the following:

(1) The issuance of the bonds in one or more series.

(2) The principal amount of the bonds, which shall be consistent with the amount specified in subdivision (b) of Section 53398.41.

(3) The date the bonds will bear.

(4) The date of maturity of the bonds.

(5) The denomination of the bonds.

(6) The form of the bonds.

(7) The manner of execution of the bonds.

(8) The medium of payment in which the bonds are payable.

(9) The place or manner of payment and any requirements for registration of the bonds.

(10) The terms of call or redemption, with or without premium.

53398.44. The legislative body may, by majority vote, provide for refunding of bonds issued pursuant to this chapter. However, refunding bonds shall not be issued if the total net interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds exceeds the total net interest cost to maturity on the

bonds to be refunded. The legislative body may not extend the time to maturity of the bonds.

53398.45. The legislative body or any person executing the bonds shall not be personally liable on the bonds by reason of their issuance. The bonds and other obligations of a district issued pursuant to this chapter are not a debt of the city, county, or state or of any of its political subdivisions, other than the district, and none of those entities, other than the district, shall be liable on the bonds and the bonds or obligations shall be payable exclusively from funds or properties of the district. The bonds shall contain a statement to this effect on their face. The bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation.

53398.46. The bonds may be sold at discount not to exceed 5 percent of par at public sale. At least five days prior to the sale, notice shall be published, pursuant to Section 6061, in a newspaper of general circulation and in a financial newspaper published in the City and County of San Francisco and in the City of Los Angeles. The bonds may be sold at not less than par to the federal government at private sale without any public advertisement.

53398.47. If any member of the legislative body whose signature appears on bonds ceases to be a member of the legislative body before delivery of the bonds, his or her signature is as effective as if he or she had remained in office. Bonds issued pursuant to this chapter are fully negotiable.

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 774

An act to amend Section 66605 of the Government Code, and to add Sections 616.1, 625, and 626 to the Public Utilities Code, relating to property.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 66605 of the Government Code is amended to read:

66605. The Legislature further finds and declares:

(a) That further filling of San Francisco Bay and certain waterways specified in subdivision (e) of Section 66610 should be authorized only when public benefits from fill clearly exceed public detriment from the loss of the water areas and should be limited to water-oriented uses (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation, and public assembly, water intake and discharge lines for desalinization plants and power generating plants requiring large amounts of water for cooling purposes) or minor fill for improving shoreline appearance or public access to the bay;

(b) That fill in the bay and certain waterways specified in subdivision (e) of Section 66610 for any purpose should be authorized only when no alternative upland location is available for such purpose;

(c) That the water area authorized to be filled should be the minimum necessary to achieve the purpose of the fill;

(d) That the nature, location, and extent of any fill should be such that it will minimize harmful effects to the bay area, such as, the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment, as defined in Section 21060.5 of the Public Resources Code;

(e) That public health, safety, and welfare require that fill be constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters;

(f) That fill should be authorized when the filling would, to the maximum extent feasible, establish a permanent shoreline;

(g) That fill should be authorized when the applicant has such valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved.

SEC. 2. Section 616.1 is added to the Public Utilities Code, to read:

616.1. Notwithstanding Section 616, a telephone corporation may not condemn any property on an airport owned by a city and county, and located in another county, unless that property is necessary for that telephone corporation to provide telecommunications as a carrier of last resort seeking to serve an unserved area.

SEC. 3. Section 625 is added to the Public Utilities Code, to read:

625. (a) (1) (A) For the purpose of this article, except as specified in paragraph (4), a public utility that offers competitive services may not condemn any property for the purpose of competing with another entity in the offering of those competitive services, unless the commission finds that such an action would serve the public interest, pursuant to a petition or complaint filed by the public utility, personal notice of which has been served on the owners of the property to be condemned, and an adjudication hearing in

accordance with Chapter 9 (commencing with Section 1701), including an opportunity for the public to participate.

(B) The requirements of this section do not apply to the condemnation of any property that is necessary solely for an electrical company or gas corporation to meet its commission-ordered obligation to serve. Proposed exercises of eminent domain by electrical or gas corporations that initially, or subsequently, acquire property for either commission-ordered electrical corporation obligation to serve and competitive telecommunications services or gas corporation obligation to serve and telecommunications services are subject to paragraph (2) of subdivision (b). For property acquired through the exercise of eminent domain after January 1, 2000, by an electrical or gas corporation solely to meet its commission-ordered obligation to serve, any electrical or gas corporation, or subsidiary or affiliate, that intends to install telecommunication equipment on the property for the purpose of providing competitive telecommunications services shall provide notice for the planned installation in the commission calendar.

(2) (A) Before making a finding pursuant to this subdivision, the commission shall conduct the hearing in the local jurisdiction that would be affected by the proposed condemnation. The hearing shall commence within 45 days of the date that the petition or complaint is filed, unless the respondent establishes that an extension of not more than 30 days is necessary for discovery or other hearing preparation. The commission shall provide public notice of the hearing pursuant to the procedures of the commission and shall also notify the local jurisdiction. In addition, the commission shall provide the local jurisdiction with copies of the notice of hearing in time for the local jurisdiction to mail that notice at least seven days in advance of the hearing to all persons who have requested copies of the local jurisdiction's agenda or agenda packet pursuant to Section 54954.1 of the Government Code.

(B) For purposes of subparagraph (A), "local jurisdiction" means each city within whose boundaries property sought to be taken by eminent domain is located, and if property sought to be taken is not located within city boundaries, each county within whose boundaries that property is located. However, where there is more than one local jurisdiction with respect to a single complaint or petition, the commission shall provide notice and copies of notices for mailing to all local jurisdictions involved, but shall hold only a single hearing in any one of those local jurisdictions.

(3) (A) The assigned commissioner or administrative law judge shall render a decision on making a finding in accordance with this subdivision within 45 days of the conclusion of the hearing, unless further briefing is ordered, in which event this period may be extended by up to 30 additional days to allow for briefing.

(B) If the rendering of a decision pursuant to this subdivision requires review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), then the time limits contained in subparagraph (A) of paragraph (2) and subparagraph (A) of paragraph (3) shall be extended as needed to accommodate that review.

(4) This subdivision and Section 626 do not apply to a railroad corporation, a refined petroleum product common carrier pipeline corporation, or a water corporation.

(b) The commission may make a finding pursuant to subdivision (a) if, in the determination of the commission, either of the following conditions is met:

(1) The proposed condemnation is necessary to provide service as a provider of last resort to an unserved area, except when there are competing offers from facility-based carriers to serve that area.

(2) The public utility is able to show all of the following with regard to the proposed condemnation:

(A) The public interest and necessity require the proposed project.

(B) The property to be condemned is necessary for the proposed project.

(C) The public benefit of acquiring the property by eminent domain outweighs the hardship to the owners of the property.

(D) The proposed project is located in a manner most compatible with the greatest public good and least private injury.

(c) The commission shall develop procedures to facilitate access for affected property owners to eminent domain proceedings pursuant to this section, and to facilitate the participation of those owners in those proceedings.

(d) Nothing in this section relieves a public utility from complying with Section 1240.030 of the Code of Civil Procedure or any other requirement imposed by law.

(e) A public utility that does not comply with this section may not exercise the power of eminent domain, including, but not limited to, any authority provided by Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure.

(f) The authority provided in this section supplements, and does not replace or otherwise affect any other limitation in law on the exercise of the power of eminent domain, including, but not limited to, any authority provided by Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure.

SEC. 4. Section 626 is added to the Public Utilities Code, to read:

626. On or after January 1, 2000, a public utility may not enter into any exclusive access agreement with the owner or lessor of, or a person controlling or managing, a property or premises served by the public utility, or commit or permit any other act, that would limit the right of any other public utility to provide service to a tenant or other occupant of the property or premises.

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 775

An act to amend Section 846.1 of the Civil Code, relating to recreational property.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 846.1 of the Civil Code is amended to read:

846.1. (a) Except as provided in subdivision (c), an owner of any estate or interest in real property, whether possessory or nonpossessory, who gives permission to the public for entry on or use of the real property pursuant to an agreement with a public or nonprofit agency for purposes of recreational trail use, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the owner.

(3) The owner prevails in the civil action.

(b) Except as provided in subdivision (c), a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on or use of real property for a recreational purpose, as defined in Section 846, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by this public entity or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the public entity.

(3) The public entity prevails in the civil action.

(c) An owner of any estate or interest in real property, whether possessory or nonpossessory, or a public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on, or use of, the real property for a recreational purpose, as defined in Section 846, pursuant to an agreement with a public or nonprofit agency, and is a defendant in a civil action brought by, or on behalf of, a person who seeks to restrict, prevent, or delay public use of that property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in the civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or public entity or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the owner or public entity.

(3) The owner or public entity prevails in the civil action.

(d) The State Board of Control shall allow the claim if the requirements of this section are met. The claim shall be paid from an appropriation to be made for that purpose. Reasonable attorneys' fees, for purposes of this section, may not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made, and may not exceed an aggregate amount of twenty-five thousand dollars ($25,000). This subdivision shall not apply if a public entity has provided for the defense of this civil action pursuant to Section 995 of the Government Code. This subdivision shall also not apply if an owner or public entity has been provided a legal defense by the state pursuant to any contract or other legal obligation.

(e) The total of claims allowed by the board pursuant to this section shall not exceed two hundred thousand dollars ($200,000) per fiscal year.

CHAPTER 776

An act to make an appropriation in augmentation of Items 9800-001-0001, 9800-001-0494, and 9800-001-0988 of Section 2.00 of the Budget Act of 1999, relating to state employees, to take effect immediately as an appropriation for the usual and current expenses of the state.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. The sum of six hundred one million two hundred twenty thousand dollars ($601,220,000) is hereby appropriated for expenditure in the 1999–2000 fiscal year in augmentation and for the purposes of state employee compensation and the state employer's health benefit costs as provided in Items 9800-001-0001, 9800-001-0494, and 9800-011-0988 of Section 2.00 of the Budget Act of 1999 (Chapter 50 of the Statutes of 1999), in accordance with the following schedule:

(a) Three hundred forty-one million five hundred thirty-eight thousand dollars ($341,538,000) payable from the General Fund in augmentation of state employee compensation as provided in Item 9800-001-0001.

(b) One hundred twenty-nine million eight hundred forty-one thousand dollars ($129,841,000) payable from unallocated special funds in augmentation of state employee compensation as provided in Item 9800-001-0494.

(c) One hundred twenty-nine million eight hundred forty-one thousand dollars ($129,841,000) payable from unallocated nongovernmental cost funds in augmentation of state employee compensation as provided in Item 9800-001-0988.

SEC. 2. This act makes an appropriation for the usual and current expenses of the state within the meaning of Article IV of the California Constitution and shall go into immediate effect.

CHAPTER 777

An act to amend Section 116365 of the Health and Safety Code, relating to drinking water.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 116365 of the Health and Safety Code is amended to read:

116365. (a) The department shall adopt primary drinking water standards for contaminants in drinking water that are based upon the criteria set forth in subdivision (b) and shall not be less stringent than the national primary drinking water standards adopted by the United States Environmental Protection Agency. Each primary drinking water standard adopted by the department shall be set at a level that is as close as feasible to the corresponding public health goal placing primary emphasis on the protection of public health, and that, to the

extent technologically and economically feasible, meets all of the following:

(1) With respect to acutely toxic substances, avoids any known or anticipated adverse effects on public health with an adequate margin of safety, and

(2) With respect to carcinogens, or any substances that may cause chronic disease, avoids any significant risk to public health.

(b) The department shall consider all of the following criteria when it adopts a primary drinking water standard:

(1) The public health goal for the contaminant published by the Office of Environmental Health Hazard Assessment pursuant to subdivision (c).

(2) The national primary drinking water standard for the contaminant, if any, adopted by the United States Environmental Protection Agency.

(3) The technological and economic feasibility of compliance with the proposed primary drinking water standard. For the purposes of determining economic feasibility pursuant to this paragraph, the department shall consider the costs of compliance to public water systems, customers, and other affected parties with the proposed primary drinking water standard, including the cost per customer and aggregate cost of compliance, using best available technology.

(c) (1) The Office of Environmental Health Hazard Assessment shall prepare and publish an assessment of the risks to public health posed by each contaminant for which the department proposes a primary drinking water standard. The risk assessment shall be prepared using the most current principles, practices, and methods used by public health professionals who are experienced practitioners in the fields of epidemiology, risk assessment, and toxicology. The risk assessment shall contain an estimate of the level of the contaminant in drinking water that is not anticipated to cause or contribute to adverse health effects, or that does not pose any significant risk to health. This level shall be known as the public health goal for the contaminant. The public health goal shall be based exclusively on public health considerations and shall be set in accordance with all of the following:

(A) If the contaminant is an acutely toxic substance, the public health goal shall be set at the level at which no known or anticipated adverse effects on health occur, with an adequate margin of safety.

(B) If the contaminant is a carcinogen or other substance that may cause chronic disease, the public health goal shall be set at the level that, based upon currently available data, does not pose any significant risk to health.

(C) To the extent information is available, the public health goal shall take into account each of the following factors:

(i) Synergistic effects resulting from exposure to, or interaction between, the contaminant and one or more other substances or contaminants.

(ii) Adverse health effects the contaminant has on members of subgroups that comprise a meaningful portion of the general population, including, but not limited to, infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subgroups that are identifiable as being at greater risk of adverse health effects than the general population when exposed to the contaminant in drinking water.

(iii) The relationship between exposure to the contaminant and increased body burden and the degree to which increased body burden levels alter physiological function or structure in a manner that may significantly increase the risk of illness.

(iv) The additive effect of exposure to the contaminant in media other than drinking water, including, but not limited to, exposures to the contaminant in food, and in ambient and indoor air, and the degree to which these exposures may contribute to the overall body burden of the contaminant.

(D) If the Office of Environmental Health Hazard Assessment finds that currently available scientific data are insufficient to determine the level of a contaminant at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety, or the level that poses no significant risk to public health, the public health goal shall be set at a level that is protective of public health, with an adequate margin of safety. This level shall be based exclusively on health considerations and shall, to the extent scientific data are available, take into account the factors set forth in clauses (i) to (iv), inclusive, of subparagraph (C), and shall be based on the most current principles, practices, and methods used by public health professionals who are experienced practitioners in the fields of epidemiology, risk assessment, and toxicology. However, if adequate scientific evidence demonstrates that a safe dose response threshold for a contaminant exists, then the public health goal should be set at that threshold. The department may set the public health goal at zero if necessary to satisfy the requirements of this subparagraph.

(2) The determination of the toxicological endpoints of a contaminant and the publication of its public health goal in a risk assessment prepared by the Office of Environmental Health Hazard Assessment are not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Office of Environmental Health Hazard Assessment and the department shall not impose any mandate on a public water system that requires the public water system to comply with a public health goal. The Legislature finds and declares that the addition of this paragraph by the act amending this section during the 1999–2000 Regular Session of the Legislature is declaratory of existing law.

(3) (A) Beginning July 1, 2001, the Office of Environmental Health Hazard Assessment shall, at the time it commences

preparation of a risk assessment for a contaminant as required by this subdivision, electronically post on its Internet web page a notice that informs interested persons that it has initiated work on the risk assessment. The notice shall also include a brief description, or a bibliography, of the technical documents or other information the office has identified to date as relevant to the preparation of the risk assessment and inform persons who wish to submit information concerning the contaminant that is the subject of the risk assessment of the name and address of the person in the office to whom the information may be sent, the date by which the information must be received in order for the office to consider it in the preparation of the risk assessment, and that all information submitted will be made available to any member of the public who requests it. Until July 1, 2001, the Office of Environmental Health Hazard Assessment shall send the notice to interested persons who request it by mail.

(B) Each draft risk assessment prepared by the Office of Environmental Health Hazard Assessment pursuant to this subdivision shall be made available to the public at least 45 calendar days prior to the date that public comment and discussion on the risk assessment are solicited at the public workshop required by Section 57003.

(C) At the time the Office of Environmental Health Hazard Assessment publishes the final risk assessment for a contaminant, the office shall respond in writing to significant comments, data, studies, or other written information submitted by interested persons to the office in connection with the preparation of the risk assessment. Any such comments, data, studies, or other written information submitted to the office shall be made available to any member of the public who requests it.

(D) Any interested person may, within 15 calendar days of the date the public workshop on a risk assessment is completed pursuant to Section 57003, request the Office of Environmental Health Hazard Assessment to submit the risk assessment to external scientific peer review prior to its publication. If the office receives such a request, the office shall submit the risk assessment to external scientific peer review in a manner substantially equivalent to the external scientific peer review process set forth in Section 57004, if the person requesting the external scientific peer review enters into an enforceable agreement with the office within 15 calendar days of making the request that requires the person requesting the external scientific peer review to fully reimburse the office for all of the costs associated with conducting the external scientific peer review.

(E) It is the intent of the Legislature that, if the Office of Environmental Health Hazard Assessment receives a request to submit a risk assessment prepared for a contaminant to which paragraph (2) of subdivision (e) applies to external scientific review, the peer review shall be conducted in a manner that does not affect

the schedule for publishing the public health goal for that contaminant as set forth in paragraph (2) of subdivision (e).

(d) Notwithstanding any other provision of this section, any maximum contaminant level in effect on August 22, 1995, may be amended by the department to make the level more stringent pursuant to this section. However, the department may only amend a maximum contaminant level to make it less stringent if the department shows clear and convincing evidence that the maximum contaminant level should be made less stringent and the amendment is made consistent with this section.

(e) (1) All public health goals published by the Office of Environmental Health Hazard Assessment shall be established in accordance with the requirements of subdivision (c) and shall be reviewed at least once every five years and revised, pursuant to subdivision (c), as necessary based upon the availability of new scientific data.

(2) On or before January 1, 1998, the Office of Environmental Health Hazard Assessment shall publish a public health goal for at least 25 drinking water contaminants for which a primary drinking water standard has been adopted by the department. The office shall publish a public health goal for 25 additional drinking water contaminants by January 1, 1999, and for all remaining drinking water contaminants for which a primary drinking water standard has been adopted by the department by no later than December 31, 2001. A public health goal shall be published by the Office of Environmental Health Hazard Assessment at the same time the department proposes the adoption of a primary drinking water standard for any newly regulated contaminant.

(f) The department or Office of Environmental Health Hazard Assessment may review, and adopt by reference, any information prepared by, or on behalf of, the United States Environmental Protection Agency for the purpose of adopting a national primary drinking water standard or maximum contaminant level goal when it establishes a California maximum contaminant level or publishes a public health goal.

(g) At least once every five years after adoption of a primary drinking water standard, the department shall review the primary drinking water standard and shall, consistent with the criteria set forth in subdivisions (a) and (b), amend any standard if any of the following occur:

(1) Changes in technology or treatment techniques that permit a materially greater protection of public health or attainment of the public health goal.

(2) New scientific evidence that indicates that the substance may present a materially different risk to public health than was previously determined.

(h) Not later than March 1 of every year, the department shall provide public notice of each primary drinking water standard it

proposes to review in that year pursuant to this section. Thereafter, the department shall solicit and consider public comment and hold one or more public hearings regarding its proposal to either amend or maintain an existing standard. With adequate public notice, the department may review additional contaminants not covered by the March 1 notice.

(i) This section shall operate prospectively to govern the adoption of new or revised primary drinking water standards and does not require the repeal or readoption of primary drinking water standards in effect immediately preceding January 1, 1997.

(j) The department may, by regulation, require the use of a specified treatment technique in lieu of establishing a maximum contaminant level for a contaminant if the department determines that it is not economically or technologically feasible to ascertain the level of the contaminant.

CHAPTER 778

An act to amend Section 20801 of, and to add Sections 20694, 21363.2, and 21363.7 to, the Government Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 20694 is added to the Government Code, to read:

20694. (a) This section shall apply only to patrol members in State Bargaining Unit 5.

(b) The state shall pay all of the normal contributions required to be paid by patrol members pursuant to Section 20681 until June 30, 2001.

(c) Notwithstanding Section 20681, effective July 1, 2001, the normal rate of contribution for patrol members shall be 1.5 percent of the compensation in excess of eight hundred sixty-three dollars ($863) per month paid those members. The state shall pay the difference between the normal contributions that would be required to be paid by patrol members pursuant to Section 20681 and the amount paid by those members pursuant to this section.

(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. 2. Section 20801 of the Government Code is amended to read:

20801. (a) The state's contribution to the retirement fund with respect to state patrol members is a sum equal to 31.18 percent of the compensation paid state patrol members.

(b) With respect to patrol members in State Bargaining Unit 5, the state shall make the additional contributions specified in Section 20694.

SEC. 3. Section 21363.2 is added to the Government Code, to read:

21363.2. (a) This section shall apply only to patrol members in State Bargaining Unit 5.

(b) Patrol members who were previously classified as peace officer/firefighter members shall have their past service under Section 21363 credited, at no cost to the member, under Section 21363.1.

SEC. 4. Section 21363.7 is added to the Government Code, to read:

21363.7. Notwithstanding Section 21363, 21363.1, or 21363.5, the limitation on the service retirement benefit shall be 90 percent for state peace officer/firefighter members who retire on and after January 1, 2000. This provision may also be applied to state peace officer/firefighter members in related supervisory or confidential positions, provided that the Department of Personnel Administration has approved this inclusion in writing to the board.

SEC. 5. The Department of Personnel Administration shall investigate the feasibility of developing and implementing a Deferred Retirement Option Plan within the Public Employees' Retirement System for members of State Bargaining Units 5 and 6.

SEC. 6. 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 5—California Association of Highway Patrolmen.

(b) Unit 6—California Correctional Peace Officers Association.

SEC. 7. 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. 8. 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. 9. Section 3 of this act shall become operative only if Senate Bill 400 of the 1999–2000 Regular Session is enacted and becomes effective on or before January 1, 2000, and, as enacted, adds Section 21363.1 to the Government Code.

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 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 779

An act to amend Section 56133 of the Government Code, to amend Section 21251 of the Public Contract Code, to amend Sections 10752, 12273, 12310, 13327, 31483, 35470.5, 41307, and 71631.7 of, and to add Sections 39034, 39035, 46796, and 46797 to, the Water Code, and to amend Sections 8.2 and 54 of the Sacramento County Water Agency Act (Chapter 10 of the Statutes of 1952, First Extraordinary Session), relating to water, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 56133 of the Government Code is amended to read:

56133. (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.

(c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:

(1) The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) This section does not apply to contracts or agreements solely involving two or more public agencies. This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county. This section does not apply to an extended service that a city or district was providing on January 1, 1994. This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.

SEC. 2. Section 21251 of the Public Contract Code is amended to read:

21251. (a) (1) All contracts for any improvement or unit of work, if the cost according to the estimate of the engineer will exceed thirty thousand dollars ($30,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts, or both.

(2) All contracts for any improvement or unit of work, if the cost according to the estimate of the engineer is thirty thousand dollars ($30,000) or less, may be let without advertising for bids in accordance with procedures adopted by the board.

(b) The board shall call for bids and advertise the call pursuant to Section 6063 of the Government Code in the district, inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as one unit or divided into severable specific parts.

(c) The work may be let under a single contract or several contracts, or both, as stated in the call. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful

performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. The board may reject any bid.

(d) If all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(e) The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

SEC. 2.5. Section 10752 of the Water Code is amended to read:

10752. Unless the context otherwise requires, the following definitions govern the construction of this part:

(a) "Groundwater" means all water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water which flows in known and definite channels.

(b) "Groundwater basin" means any basin identified in the department's Bulletin No. 118, dated September 1975, and any amendments to that bulletin, but does not include a basin in which the average well yield, excluding domestic wells that supply water to a single-unit dwelling, is less than 100 gallons per minute.

(c) "Groundwater extraction facility" means any device or method for the extraction of groundwater within a groundwater basin.

(d) "Groundwater management plan" or "plan" means a document that describes the activities intended to be included in a groundwater management program.

(e) "Groundwater management program" or "program" means a coordinated and ongoing activity undertaken for the benefit of a groundwater basin, or a portion of a groundwater basin, pursuant to a groundwater management plan adopted pursuant to this part.

(f) "Groundwater recharge" means the augmentation of groundwater, by natural or artificial means, with surface water or recycled water.

(g) "Local agency" means any local public agency that provides water service to all or a portion of its service area, and includes a joint powers authority formed by local public agencies that provide water service.

(h) "Recharge area" means the area that supplies water to an aquifer in a groundwater basin and includes multiple wellhead protection areas.

(i) "Watermaster" means a watermaster appointed by a court or pursuant to other provisions of law.

(j) "Wellhead protection area" means the surface and subsurface area surrounding a water well or well field that supplies a public water system through which contaminants are reasonably likely to migrate toward the water well or well field.

SEC. 3. Section 12273 of the Water Code is amended to read:

12273. This part 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, repeals or extends that date.

SEC. 4. Section 12310 of the Water Code is amended to read:

12310. As used in this chapter, the following terms have the following meanings:

(a) "Local public agency" means a reclamation district or levee district or other public agency responsible for the maintenance of a nonproject levee as defined in subdivision (e) of Section 12980 or a project levee as defined in subdivision (f) of Section 12980.

(b) "Project" means the flood control improvement and any mitigation and habitat improvement constructed, or interests in land acquired, for those purposes pursuant to this part.

(c) "Department" means the Department of Water Resources.

(d) "Delta" means the Sacramento-San Joaquin Delta as described in Section 12220.

(e) "Net long-term habitat improvement" means enhancement of riparian, fisheries, and wildlife habitat.

(f) "CALFED Bay Delta Program" or "CALFED program" means the program established in May 1995 as a joint effort among state and federal agencies with management and regulatory responsibilities in the San Francisco Bay and Sacramento-San Joaquin River Delta to develop long-term solutions to resource management problems involving the bay-delta.

SEC. 5. Section 13327 of the Water Code is amended to read:

13327. In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and other matters as justice may require.

SEC. 6. Section 31483 of the Water Code is amended to read:

31483. (a) Notwithstanding any other provision of this division, the Contra Costa Water District may issue bonds in accordance with the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code) for the purpose of financing the acquisition of land and land rights and the construction, improvement, or acquisition of any facilities necessary or convenient for the storage, transmission,

distribution, or treatment of water for beneficial use, except that Sections 54380 to 54388, inclusive, of the Government Code shall not apply to the issuance and sale of bonds pursuant to this section.

(b) The board shall not proceed under this section until it has submitted to the qualified voters of the district at a special election called by a resolution of the board a proposition as to whether the district may authorize and sell revenue bonds under this section. The proposition shall set forth generally the proposed facilities to be financed and the costs thereof. If a majority of the voters of the district voting on the proposition at the election vote in favor of the proposition, the board may proceed to issue and sell revenue bonds as provided in this section. If the proposition fails to carry at the election, the proposition shall not again be voted upon until at least six months have elapsed since the date of the last election at which the proposition was submitted.

(c) The resolution calling the election shall fix the date on which the election is to be held, the proposition to be submitted at the election, the manner of holding the election and of voting for or against the proposition, and shall state that in all other particulars the election shall be held and the votes canvassed as provided by law for the holding of elections within the district. The election may be held separately or may be consolidated with any other election authorized by law at which the voters of the district may vote.

(d) Bonds issued pursuant to this section may be sold at one or more private or public sales as the board of directors of the Contra Costa Water District shall determine.

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

SEC. 7. Section 35470.5 of the Water Code is amended to read:

35470.5. The district may, by resolution, provide that a penalty not in excess of 10 percent shall be added to water, standby, facility, or other charges which are delinquent, and the delinquent charges shall bear interest at a rate not in excess of $1^1/_2$ percent per month. For purposes of this section, the district shall establish the period or date after which the charges shall become delinquent if they remain unpaid. The delinquency dates established in Part 7 (commencing with Section 36550) and Part 7.5 (commencing with Section 37200) for unpaid assessments, which may include standby or other charges for the use of district water that has been made a part of the assessment, shall not apply to the addition of penalties and interest to delinquent charges, pursuant to this section.

SEC. 8. Section 39034 is added to the Water Code, to read:

39034. "Principal county" means the county in which the greater portion of the land of a district is located.

SEC. 9. Section 39035 is added to the Water Code, to read:

39035. "Board of supervisors" means the board of supervisors of the principal county.

SEC. 10. Section 41307 of the Water Code is amended to read:

41307. If, by the 59th day prior to the election, only one person has been nominated as provided in Section 41305 for any elective office to be filled at that election, or no one has been nominated for that office, the board, in its discretion and by resolution, may order that an election not be held for that office and request the board of supervisors to appoint to that office the person nominated or, where no one has been nominated for that office, to appoint to that office a person who the board of supervisors selects. Upon receipt of a request from the board, the board of supervisors shall make that appointment, and the person appointed shall qualify and take office and serve as if elected at a general election.

SEC. 11. Section 46796 is added to the Water Code, to read:

46796. Any action or proceeding, based on the alleged invalidity or irregularity of a deed executed by the county treasurer to the district or based on the alleged ineffectiveness of the deed to convey the absolute title to the property described in it, may be commenced only within 180 days after the recordation of the deed.

SEC. 12. Section 46797 is added to the Water Code, to read:

46797. An action or proceeding based on the alleged invalidity or irregularity of any agreement of sale, deed, lease, or option executed by a district in connection with land deeded to it by the county treasurer or based on the alleged ineffectiveness of the instrument to convey or affect the title to the land described in it may be commenced only within 180 days after the execution of the instrument by the district.

SEC. 13. Section 71631.7 of the Water Code is amended to read:

71631.7. (a) Notwithstanding Section 71631, in any improvement district situated within the San Luis Rey Municipal Water District, the standby assessment or availability charge shall not exceed thirty dollars ($30) per acre per year for land on which the charge is levied or thirty dollars ($30) per year for a parcel less than one acre. In such an improvement district, the proceeds from any standby assessment or availability charge in excess of ten dollars ($10) per acre per year or ten dollars ($10) per year for a parcel less than one acre shall only be used for the purposes of that improvement district.

(b) This section, applicable only to the San Luis Rey Municipal Water District, is necessary because of the unique and special water management problems of those areas included within that district.

(c) 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. 14. Section 8.2 of the Sacramento County Water Agency Act (Chapter 10 of the Statutes of 1952, First Extraordinary Session) is amended to read:

Sec. 8.2. The legal title to all property acquired under the provisions of this act shall immediately and by operation of law vest

in the agency, and shall be held by the agency, in trust for, and is hereby dedicated and set apart to, the uses and purposes set forth in this act. The board of directors may hold, use, acquire, manage, occupy, and possess the property. The board of directors may determine, by resolution duly passed and entered in their minutes that any property, real or personal, held by the agency is no longer necessary to be retained for the uses and purposes thereof, and may thereafter sell or otherwise dispose of the property, or lease the property, in the manner provided by law for the disposition and sale of property of counties.

SEC. 15. Section 54 of the Sacramento County Water Agency Act (Chapter 10 of the Statutes of 1952, First Extraordinary Session) is amended to read:

Sec. 54. (a) If a groundwater management zone is formed pursuant to Section 33, the agency shall establish a water advisory commission consisting of seven members, two members being nominated and appointed by the board, one of whom represents agriculture, and five members being appointed by the board from nominations by water purveyors operating within the agency, as follows:

(1) One member nominated by the water purveyors delivering more than 50 percent of their total water supply for agricultural uses.

(2) One member nominated by public water utilities as defined in Section 216 of the Public Utilities Code.

(3) One member nominated by incorporated cities.

(4) One member nominated by water purveyors obtaining more than 50 percent of their water supply from groundwater and delivering more than 50 percent of their total water supply to municipal and industrial uses.

(5) One member nominated by water purveyors obtaining more than 50 percent of their water supply from surface water and delivering more than 50 percent of their total water supply for municipal and industrial uses.

(b) Terms of appointment of members of the commission are for four years. Three of the members shall be reappointed or replaced in January of odd-numbered years and four in even-numbered years, the time of reappointment or replacement to be selected by lot at the commission's initial meeting. Replacement of members in the event of a midterm vacancy shall be filled for the remainder of the unexpired term in the same manner as provided in subdivision (a) for the appointment of members.

(c) Compensation of members shall be the same as for members of the Sacramento County Planning Commission.

(d) The commission shall elect from its members a chairperson and a vice chairperson. A majority of the commission constitutes a quorum, and the commission shall adopt rules for its proceedings and set the time for its meetings. An affirmative vote of four members shall be required to constitute action of the commission. Meetings of

the commission shall be conducted in accordance 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).

(e) Among other duties the board may confer on the commission, those duties shall include advising the board on water policy, water planning, and water development proposals, agency budget and expenditures, groundwater management programs, water rights, conducting initial public hearings on zone formation, hydrologic boundary determinations, groundwater recharge proposals, and other matters which may come before the commission.

SEC. 16. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to remedy critical water quality and supply problems, to make changes in the Sacramento County Water Agency Act, and to make other prescribed changes in statutes relating to water, as soon as possible, thereby protecting the public health and safety, it is necessary that this act take effect immediately.

CHAPTER 780

An act to add Article 3 (commencing with Section 104555) to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, relating to the tobacco manufacturers' master settlement agreement.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Article 3 (commencing with Section 104555) is added to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, to read:

Article 3. Master Settlement Agreement

104555. The Legislature finds and declares all of the following:

(a) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The Surgeon General has determined that smoking causes lung cancer, heart disease, and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the state. Under certain health care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that those manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the Master Settlement Agreement, with the state. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present, and certain future claims against them as described therein, to pay substantial sums to the state (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proved to have acted culpably. It is thus in the interest of the state to require that these manufacturers establish a reserve fund to guarantee a source of compensation and to prevent those manufacturers from deriving large, short-term profits and then becoming judgment proof before liability may arise.

104556. The definitions contained in this section shall govern the construction of this article.

(a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership

or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(c) "Allocable share" means allocable share as that term is defined in the Master Settlement Agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in this section. "Cigarette" also includes "roll-your-own" tobacco, meaning any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(e) "Master Settlement Agreement" means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars ($1,000,000,000) where the arrangement requires that the financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with subdivision (b) of Section 104557.

(g) "Released claims" means released claims as that term is defined in the Master Settlement Agreement.

(h) "Releasing parties" means releasing parties as that term is defined in the Master Settlement Agreement.

(i) "Tobacco product manufacturer" means an entity that after the date of enactment of this article directly, and not exclusively through any affiliate:

(1) Manufactures cigarettes anywhere that the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where

the importer is an original participating manufacturer as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States) or

(2) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) Becomes a successor of an entity described in paragraph (1) or (2).

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless the affiliate itself falls within any of paragraphs (1) to (3) of this subdivision.

(j) "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs, or "roll-your-own" tobacco containers, bearing the excise tax stamp of the state. The State Board of Equalization shall adopt any regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of the tobacco product manufacturer for each year.

104557. (a) Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, after the date of enactment of this article shall do one of the following:

(1) Become a participating manufacturer as that term is defined in Section II(jj) of the Master Settlement Agreement and generally perform its financial obligations under the Master Settlement Agreement; or

(2) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

(A) For 1999: $0.0094241 per unit sold during that year, after the date of the enactment of this article.

(B) For 2000: $0.0104712 per unit sold during that year.

(C) For each of 2001 and 2002: $0.0136125 per unit sold during the year in question.

(D) For each of 2003 through 2006: $0.0167539 per unit sold during the year in question.

(E) For each of 2007 and each year thereafter: $0.0188482 per unit sold during the year in question.

(b) Any tobacco product manufacturer that places funds into escrow pursuant to paragraph (2) of subdivision (a) shall receive the interest or other appreciation on the funds as earned. The funds,

other than the interest or other appreciation, shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against that tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under that judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the Master Settlement Agreement, , had it been a participating manufacturer, as such payments are determined pursuant to section IX(i)(2) of the Master Settlement Agreement and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(3) To the extent not released from escrow under paragraph (1) or (2) of subdivision (b), funds shall be released from escrow and revert back to the tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to paragraph (2) of subdivision (a) shall annually certify to the Attorney General that it is in compliance with paragraph (2) of subdivision (a), and subdivision (b). The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(1) Be required within 15 days to place the funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of paragraph (2) of subdivision (a), or subdivision (b), may impose a civil penalty to be paid to the General Fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow.

(2) In the case of a knowing violation, be required within 15 days to place the funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of paragraph (2) of subdivision (a), or subdivision (b), may impose a civil penalty to be paid to the General Fund in an amount not to exceed 15 percent of the amount improperly withheld from escrow

per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow.

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

(d) Each failure to make an annual deposit required under this section shall constitute a separate violation.

CHAPTER 781

An act to add Section 3099 to the Labor Code, relating to apprenticeship.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 3099 is added to the Labor Code, to read:

3099. The Division of Apprenticeship Standards shall do all of the following:

(a) On or before January 1, 2001, establish and validate minimum standards for the competency and training of electricians through a system of testing and certification.

(b) On or before March 1, 2000, establish an advisory committee and panels as necessary to carry out the functions under this section. There shall be contractor representation from both joint apprenticeship programs and unilateral nonunion programs in the electrical contracting industry.

(c) On or before January 1, 2001, establish fees necessary to implement this section.

(d) On or before January 1, 2001, establish and adopt regulations to enforce this section.

(e) There shall be no discrimination for or against any person based on membership or nonmembership in a union.

As used in this section, "electricians" include all employees who engage in the connection of electrical devices for electrical contractors licensed pursuant to Section 7058 of the Business and Professions Code, specifically, contractors classified as electricians in the Contractors' State License Board Rules and Regulations. This section does not apply to electrical connections under 100 volt-amperes. This section does not apply to persons performing work to which Section 7042.1 of the Business and Professions Code is

applicable, or to electrical work ordinarily and customarily performed by stationary engineers.

CHAPTER 782

An act to amend Sections 1065.3, 1669, 1727, 1748, and 1748.5 of, and to add Sections 1723, 1742.2, and 12968 to, the Insurance Code, relating to insurance.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1065.3 of the Insurance Code is amended to read:

1065.3. If, after hearing as provided by Section 1065.1 or subdivision (b) of Section 1065.2, any of the statements as to conduct, conditions, or grounds in the notice are found to be true, the commissioner shall make an order or orders as may be reasonably necessary to correct, eliminate, or remedy the conduct, conditions, or grounds. As part of the order or orders, the commissioner may also order the person to whom the order is directed to fully reimburse the commissioner for the commissioner's costs in investigating, examining, and prosecuting the matter. An order of reimbursement shall be enforced as provided in Section 1065.5.

SEC. 2. Section 1669 of the Insurance Code is amended to read:

1669. The commissioner may, without hearing, deny an application if the applicant has:

(a) Committed a felony as shown by a plea of guilty or nolo contendere, or by a final judgment of conviction thereof;

(b) Committed a misdemeanor denounced by this code or by other laws regulating insurance as shown by a plea of guilty or nolo contendere, or by a final judgment of conviction thereof;

(c) Had a previous application for a professional, occupational, or vocational license denied for cause by any licensing authority, within five years of the date of the filing of the application to be acted upon, on grounds that should preclude the granting of a license by the commissioner under this chapter; or

(d) Had a previously issued professional, occupational, or vocational license suspended or revoked for cause by any licensing authority, within five years of the date of the filing of the application to be acted upon, on grounds that should preclude the granting of a license by the commissioner under this chapter.

In the event the commissioner issues an order based on a plea that does not at any time result in a judgment of conviction, the commissioner shall vacate the order upon petition by the applicant.

SEC. 3. Section 1723 is added to the Insurance Code, to read:

1723. (a) At the time any original or renewal license application that is submitted to the commissioner shows a conviction of the applicant of a felony involving dishonesty or breach of trust, or of a violation of Section 1033 of Title 18 of the United States Code, the commissioner shall either commence a proceeding pursuant to Section 1668 or 1669, or Section 1738 in the case of a renewal application, or give written consent to the applicant or licensee pursuant to paragraph (2) of subsection (e) of Section 1033 of Title 18 of the United States Code.

(b) This section shall apply to all licenses and registrations issued by the commissioner pursuant to this code, whether included in this chapter or in any other chapter of this code, and without regard to whether another chapter incorporates the requirements of this section by reference.

SEC. 4. Section 1727 of the Insurance Code is amended to read:

1727. (a) The commissioner shall, after notice and hearing, promulgate reasonable rules and regulations specifying the manner and type of records to be maintained by those licensees acting as insurance agents and brokers and the location where the records shall be kept. Those records shall be open to inspection or examination by the commissioner at all times, and the commissioner may at any time require the licensee to furnish any information maintained or required to be maintained in those records.

(b) Every licensee acting as an insurance agent and broker shall keep the records as required by the regulations promulgated pursuant to subdivision (a).

(c) Every licensee acting as an insurance agent and broker employing a licensee in the capacity of an insurance solicitor shall keep the records required by the regulations promulgated pursuant to subdivision (a) for any insurance transacted by the insurance solicitor in the capacity of employee of the employing licensee.

SEC. 5. Section 1742.2 is added to the Insurance Code, to read:

1742.2. The department shall promulgate regulations necessary to comply with the requirements of Section 1033 of Title 18 of the United States Code no later than January 1, 2001.

SEC. 6. Section 1748 of the Insurance Code is amended to read:

1748. The commissioner, in any proceeding under the provisions of this article, may, by an alternative order, permit a licensee to elect in writing to pay a specified money penalty, within a specified time in lieu of a license suspension or other permitted action. If the licensee so elects, the sum of money specified shall be paid to the commissioner for the use of the State of California. The sum specified shall not exceed:

(a) Four thousand dollars ($4,000) for each offense.

(b) Twenty thousand dollars ($20,000) in the aggregate for all offenses involved in any one proceeding.

(c) Thirty percent of the gross commissions on insurance transacted by the licensee in the preceding calendar year.

(d) Any amount proven, or admitted, in the proceeding to have been received and retained by the licensee in violation of this code.

The commissioner shall determine the monetary penalty to be paid in any given case and in so doing shall not be limited to the selection of the penalty specified in any one of the above subdivisions, as compared with the penalty in any of the other three subdivisions, that will result in the payment by the licensee of the least amount.

The amount of reimbursement the commissioner orders shall be the amount that fully reimburses the commissioner for the commissioner's costs, or any lesser amount that the commissioner determines is the most the subject of the order can pay in the event the subject is financially unable to fully reimburse the commissioner.

If a licensee fails to pay a monetary penalty or reimbursement within the time specified in the order, the commissioner, unless the order is lawfully stayed, may deny a pending application for a license, or may revoke or suspend the license of the subject of the order for a period of time as determined by the commissioner. If, for any reason, an application is denied, or a license is revoked or suspended, before the subject of the order has paid the full amount of an ordered monetary penalty or reimbursement, the balance owed shall be paid before a license may be reinstated or an application for any new license may be granted.

SEC. 7. Section 1748.5 of the Insurance Code is amended to read:

1748.5. (a) For the purposes of this section, the following definitions are applicable:

(1) "Production agency" means any person or organization licensed under 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).

(2) "Subject person" means any person who has participated or may participate in any manner in the business of a production agency, or any person licensed as a producer.

(3) "Insurer" means any domestic insurer, and any insurer that is admitted to transact insurance in this state, provided that if a subject person of an insurer is not a resident of California, or operating out of a place of business within California, then the subject person shall be engaged in direct management, direction, or conduct of the business of insurance in California in order to come within the provisions of this section.

(b) If, after notice and a hearing, the commissioner finds all of the following, the commissioner may issue an order removing a subject person from his or her office or employment with the production agency and prohibiting the subject person from participating in any manner in the conduct of the business of an insurer or production agency, except with the prior consent of the commissioner:

(1) (A) The subject person has engaged in misconduct with respect to the business of insurance that has caused financial or other injury to any person, or

(B) The subject person has engaged in fraud, or willful acts or omissions involving dishonesty that exposed a person to financial or other injury; and

(2) The subject person's conduct or practice demonstrates unfitness to continue as a subject person.

(c) (1) If the commissioner gives written notice pursuant to subdivision (b) to a subject person, the commissioner shall immediately issue an order prohibiting the subject person from participating in any manner in the business of insurance, except with the prior consent of the commissioner, if the commissioner: (A) finds that failure to immediately issue the order threatens the financial solvency of an insurer or may reasonably be expected to cause irreparable injury to any person; (B) serves that subject person and the production agency with written notice of the suspension order; and (C) finds that all of the necessary factors are present which would permit the commissioner, after notice and a hearing, to issue an order pursuant to subdivision (b) removing a subject person from his or her office or employment with the production agency and prohibiting the subject person from participating in any manner in the business of an insurer or production agency.

(2) Any suspension order issued pursuant to paragraph (1) of this subdivision shall be effective until the date the commissioner dismisses the charges contained in the notice served under subdivision (b) or paragraph (1) of this subdivision, the effective date of an order issued by the commissioner pursuant to subdivision (b), or a court issues a stay of the order pursuant to subdivision (d).

(d) Within 10 days after a subject person has been served with an order of suspension pursuant to subdivision (c), the person may apply to the superior court of the county in which the principal office of the production agency is located for a stay of the order pending completion of the proceedings pursuant to subdivision (b), and the court shall have jurisdiction to issue an order staying the suspension. Nothing in this subdivision shall be deemed to authorize the court to issue a stay order on an ex parte basis.

(e) (1) If the commissioner finds both of the following, he or she shall immediately issue an order suspending a subject person from his or her office or employment with a production agency and prohibiting the subject person from participating in any manner in the conduct of the business of an insurer or production agency, except with the prior consent of the commissioner: (A) the subject person has been charged in an indictment issued by a grand jury, or in an information, complaint, or similar pleading issued by a United States Attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime punishable by imprisonment for a term exceeding one year and which involves as

one of its necessary elements a fraudulent act or an act of dishonesty in the acceptance, custody, or payment of money or property; and (B) that a failure to immediately issue the order threatens the financial solvency of an insurer or may cause financial or other injury to any person.

In the event the criminal proceedings are terminated other than by judgment of conviction, an order issued pursuant to paragraph (1) of this subdivision shall be deemed rescinded as if it had not been issued.

(2) If the commissioner finds both of the following, he or she may immediately issue an order removing a subject person from his or her office or employment with a production agency and prohibiting the subject person from participating in any manner in the business of an insurer or production agency, except with the prior consent of the commissioner: (A) the person has during the preceding five years been convicted of a crime that is punishable by imprisonment for a term exceeding one year and has as one of its necessary elements a fraudulent act or an act of dishonesty in the accepting, custody, or payment of money or property; and (B) that a failure to immediately issue the order threatens the financial solvency of an insurer or may cause financial or other injury to any person.

(3) The fact that any subject person charged with a crime involving as one of its necessary elements a fraudulent act or any act of dishonesty in the acceptance, custody, or payment of money or property is not convicted of that crime shall not preclude the commissioner from issuing an order regarding the subject person pursuant to other provisions of this code.

(f) (1) Within 30 days after an order is issued pursuant to subdivision (c) or (e), the subject person to whom the order is issued may choose to do either of the following: (A) file with the commissioner an application for a hearing on the order. The commissioner shall, upon the written request of the subject person, extend the 30-day period by an additional 30 days provided the request is filed with the commissioner within 30 days after the order is issued. If the commissioner fails to commence the hearing within 15 business days after the application is filed, or within a longer period of time to which the subject person consents, the order shall be deemed rescinded as if it had not been issued. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded as if it had not been issued, or (B) petition for judicial review of the order pursuant to Section 1085 of the Code of Civil Procedure, where the court shall exercise its independent judgment on the evidence.

(2) The right of any subject person to whom an order is issued pursuant to subdivision (c) or (e) to petition for judicial review of the order shall not be affected by the failure of that subject person to apply to the commissioner for a hearing on the order as provided by this subdivision.

(g) (1) Any person to whom an order is issued pursuant to subdivision (b), (c), or (e) may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application unless he or she finds that it is reasonable to believe that the person will, if and when he or she becomes a subject person, comply with all of the applicable provisions of this code and of any regulation or order issued thereunder.

(2) The right of any subject person to whom an order is issued pursuant to subdivision (b), (c), or (e) to petition for judicial review of the order shall not be affected by the failure of that subject person to apply to the commissioner pursuant to paragraph (1).

(h) (1) It is unlawful for any subject person or former subject person to whom an order is issued pursuant to subdivision (b), (c), or (e) to do any of the following as long as the order is in effect, except with the prior consent of the commissioner: (A) to serve or act as a subject person for any insurer or production agency; or (B) to directly or indirectly vote any shares or other securities of an insurer or production agency.

(2) If, after notice and a hearing, the commissioner finds that any subject person has violated paragraph (1) of this subdivision, the commissioner may order that subject person to pay to the commissioner a civil penalty, which may be recovered in a civil action, in an amount the commissioner may specify; provided however, that the amount of the civil penalty shall not exceed one thousand dollars ($1,000) for each day for which the violation continues.

In determining the amount of civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the subject person charged, the gravity of the violation, the history of previous violations by the person, and other factors as in the opinion of the commissioner may be relevant.

(3) If, after notice and a hearing, the commissioner finds that any production agency has knowingly aided and abetted a subject person in a violation of paragraph (1) of this subdivision, or subdivision (h) of Section 728, the commissioner may order that production agency to pay to the commissioner a civil penalty in an amount the commissioner may specify; provided however, that the amount of the civil penalty shall not exceed one thousand dollars ($1,000) for each violation or in the case of a continuing violation, one thousand dollars ($1,000) for each day for which the violation continues, up to a maximum of fifty thousand dollars ($50,000). Continuation of the subject person's salary or other employee benefits pending final disposition shall not be considered aiding and abetting a subject person.

In determining the amount of civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the subject person charged,

the gravity of the violation, the history of previous violations by the person, and other factors as in the opinion of the commissioner may be relevant.

(i) Except as otherwise provided by this section, any hearing required by 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, subject to the following:

(1) At the option of the subject person, all hearings shall be a closed session and private, and the records of the hearings shall not be made public unless the hearing results in a final order adverse to the subject person.

(2) Where judicial review is sought by the subject person pursuant to Section 1085 of the Code of Civil Procedure, the court shall exercise its independent judgment upon the evidence.

(3) When a subject person to whom an order has been issued pursuant to subdivision (c) or (e) applies to the commissioner for a hearing pursuant to subparagraph (A) of paragraph (1) of subdivision (f), the Office of Administrative Hearings shall schedule the hearing on a priority basis at the earliest possible time and once the hearing is commenced, it shall not be continued for more than three business days without the consent of the subject person.

(4) If the Office of Administrative Hearings cannot schedule the commencement of a hearing within 15 business days as provided by paragraph (1) of subdivision (f), and the subject person does not waive his or her right to a hearing commencing within 15 days, the hearings may be conducted by administrative law judges appointed by the commissioner; the hearing shall be completed within 45 days of commencement, unless additional time is requested by the subject person. If the hearing is not completed within the 45 days, the order shall be deemed rescinded as if it had not been issued. The scheduling of other hearings before the administrative law judge shall not be considered good cause for purposes of this paragraph.

(j) Nothing in this section is intended to or shall be construed to create a private cause of action against an offending subject person or insurer or production agency that aids and abets a subject person, based on the standards established by this section or the commissioner's findings or orders pursuant to this section.

SEC. 8. Section 12698 is added to the Insurance Code, to read:

12698. Every pleading issued by the commissioner to initiate a formal enforcement action against a licensee under this code, and every order issued by the commissioner or a court of competent jurisdiction or other document that resolves a formal enforcement action, shall be displayed on the department's internet web site, if the document is a public record that is not exempt from disclosure to the public pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 9. The Legislature finds and declares that the amendments to Section 1727 of the Insurance Code, made by Section 3 of this act do not constitute a change in, but are declaratory of, existing law.

CHAPTER 783

An act to add Sections 14053, 14529.01, 14529.3, 14529.6, and 14529.11 to, and to add and repeal Section 14007.5 of, the Government Code, and to amend Sections 182.6 and 182.7 of the Streets and Highways Code, relating to highways, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 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 voters at the November 3, 1998, general election passed Proposition 2 to stop future diversion of transportation funds for nontransportation purposes by a 75 percent majority vote, thus indicating overwhelming support for using these funds on needed transportation improvements.

(2) In all of the history of the State Highway Account, in the State Transportation Fund, which is more than 60 years, the cash balance has averaged under five hundred million dollars ($500,000,000).

(3) As of January 1, 1999, the cash balance in the State Highway Account is more than one billion eight hundred million dollars ($1,800,000,000).

(4) There are numerous reasons for this large cash balance.

(5) The people of California who pay for and are dependent on this state's transportation system expect their tax funds to be put to work building, operating, rehabilitating, and maintaining the transportation system.

(6) The people of California do not expect their tax funds to remain deposited in the State Highway Account for years after being collected, where they provide no transportation benefits.

(7) State and local transportation needs are increasing at an accelerating rate as the overall highway and transit system continues to deteriorate rapidly with age, exacerbated by numerous weather, earthquake, and other ravages.

(8) As the state's economy continues its recovery since the mid-1990's, more and more pressure has been put on the transportation system by commerce and the increase in commuter traffic.

(9) The Department of Finance projects another 20 to 25 percent increase in the population that will be trying to use California's already overburdened transportation system over the next 20 years.

(10) In order to bring this cash balance down to a reasonable level, the Department of Transportation needs to update its information management systems to modern standards that reflect current public and private practices and technology.

(11) The Department of Transportation, the California Transportation Commission, regional transportation planning agencies, local transportation commissions, city and county governments, local transit agencies, statewide labor organizations, and businesses and agricultural employers all agree that this cash balance must be used for high priority transportation needs as soon as possible.

(b) Accordingly, it is the intent of the Legislature, by the enactment of this act, to expedite the use of the excessively large cash balance in the State Highway Account and to direct the California Transportation Commission and Department of Transportation to accomplish the tasks necessary to put these taxpayer funds to work at the earliest possible time on needed transportation improvements.

SEC. 2. Section 14007.5 is added to the Government Code, to read:

14007.5. (a) For purposes of this section, "district" means a numbered district of the department.

(b) The director shall establish four transportation project delivery advisory teams, two in northern California districts and two in southern California districts, to assist expeditious delivery of state and local transportation projects. One of the districts selected for the advisory teams shall include a county that has a population of less than one million persons, and another selected district shall include a county that has a population of less than 750,000 persons.

(c) Each team shall include, at a minimum, all of the following members:

(1) The regional district director.

(2) The executive director of each agency responsible for approval of each county's submission to the state transportation improvement program.

(3) The executive director of the regional or metropolitan transportation planning organization in the regional district.

(4) The following members shall be nominated by the entities to be represented not later than 60 days after enactment of the act that added this section to the Government Code during the 1999–2000 Regular Session, as follows:

(A) A member representing the local transit districts. In districts with a population of more than one million persons, there shall be two members, one from a local bus operator and one from a regional rail operator.

(B) A member representing the cities in the regional district. This member shall be a city public works director, chosen by the City Selection Committee. In regional districts with populations of more than one million persons, there shall be two members, one from cities with populations of less than 100,000 persons and one from cities with populations of 100,000 persons or more.

(C) A member who shall be a county public works director, chosen by the counties in the regional district.

(D) A member representing the state employee union representing the department's engineering and professional employees responsible for project delivery functions, chosen by the Professional Engineers in California Government.

(E) A member representing the private construction trade unions, jointly nominated by the Laborers and Operating Engineers unions.

(F) A member of an association that represents private employers, selected by the director, in consultation with the business groups in the district.

(d) In addition to the members listed under subdivision (c), the regional district director shall invite a representative from the federal Department of Transportation to attend meetings of the advisory teams. The project delivery advisory teams shall hold their initial meeting not later than 90 days after enactment of the act that added this section to the Government Code during the 1999–2000 Regular Session.

(e) Staff support for the project delivery teams shall be made available by the department and the local agencies responsible for submissions to the regional transportation improvement program and the state transportation improvement program.

(f) The district director shall act as team coordinator of each project delivery team for the purpose of setting meetings, making announcements, producing written materials, and providing logistics.

(g) All financial support of the project delivery teams shall be made available from existing planning, programming, and design resources, and other resources currently available to team members.

(h) (1) Notwithstanding Section 7550.5, each project delivery advisory team shall complete reports identifying how transportation project delivery could be significantly accelerated through any or all of the following:

(A) Changes in federal, departmental, regional, or local agency programs, organization, staffing levels, procedures, guidelines or any other actions relating to operation of those agencies.

(B) Changes in local, state, or federal law, procedures, regulations, or guidelines.

(C) Granting of new authority with the intent of accelerating project delivery.

(D) Any other new, creative strategies that could reasonably be taken on a regional district or statewide basis to accelerate implementation of needed transportation improvements.

(2) Each project delivery advisory team, within 180 days after its initial meeting, shall deliver copies of its final report to the Governor, the secretary, the director, the chairperson of the commission, and the Chairperson of the Transportation Policy Committees of both houses of the Legislature. One report shall be provided to each of the state legislators representing the regional district.

(i) This section shall become inoperative on June 30, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative or is repealed.

SEC. 3. Section 14053 is added to the Government Code, to read:

14053. (a) It is the intent of the Legislature, in enacting this section, to establish an advisory body that, among other things, develops recommendations on ways to upgrade and modernize the data automation system within the department in a manner that enables the department to track the status of specific transportation projects and closely monitor the use of federal transportation funds, and includes other features that foster efficiencies in the delivery of transportation projects in this state. It is the intent of the Legislature that the advisory body established under this section develop a plan that focuses on ways to complement existing efforts within the department to upgrade the department's internal data automation system.

(b) (1) The department shall provide staff support for a management information system committee.

(2) The secretary shall designate the chairperson of the committee and shall appoint representatives to the committee from all of the following:

(A) The commission.

(B) The Department of Information Technology.

(C) Counties.

(D) Cities.

(E) Agencies responsible for approving each county's submission to the state transportation improvement program.

(F) Designated, multicounty regional transportation planning agencies.

(G) The department.

(3) The committee shall develop a plan for a management information system for project monitoring and project delivery purposes. The plan shall specifically deal with the issue of closely monitoring the use of federal transportation funds, including, but not limited to, those funds that are made available through the federal Regional Surface Transportation Program and the federal Congestion Management and Air Quality program to ensure full and timely use of those funds under subdivision (i) of Section 182.6 of, and

subdivision (f) of Section 182.7 of, the Streets and Highways Code. The committee shall consider developing all of the following:

(A) A report listing the data that would be required to provide necessary project accountability and tracking, including, but not limited to, requirements for specific project identification, budgeting, scheduling, milestone reporting, expenditures, and progress reports.

(B) A report on the anticipated costs of building and operating the system.

(C) A description of an appropriate procurement process.

(D) Any other information necessary for anticipating and effectively managing project delivery issues in an expeditious manner.

(c) The committee shall examine the feasibility of developing a system designed to reflect the diverse constituency of agencies that may need access to the system, including, but not limited to, regional transportation planning agencies, self-help sales tax authorities, local cities and counties, transit districts, and other recipients of funds under the state transportation improvement program.

(d) The committee shall consider one or more models for implementing the system in each county or region of the state. The model shall be appropriate for use in rural or urban districts.

(e) The plan shall contain recommendations for improvements to the department's internal data management system that can be implemented in phases. The first phase of the plan shall include recommendations on ways to improve project tracking capability. The plan shall also provide for development by the department of protocols regarding input and maintenance of the management information system.

(f) (1) Not later than March 31, 2000, the department shall submit to the Governor and the Legislature a progress report regarding current efforts by the department to improve its management information system capability and regarding development of the plan. The report shall include, but need not be limited to, an estimated completion date for the comprehensive data management system and a timetable for the interim steps that the department will take to provide the information necessary to satisfy the project monitoring requirements under Chapter 622 of the Statutes of 1997 and under the federal Transportation Equity Act for the 21st Century (Public Law 105-178) until the comprehensive data management system is operational.

(2) Not later than October 1, 2000, a draft of the plan shall be circulated to interested parties for review and comment.

(3) Not later than February 1, 2001, the committee shall submit the final plan to the Legislature.

SEC. 4. Section 14529.01 is added to the Government Code, to read:

14529.01. (a) It is the intent of the Legislature to facilitate project development work on needed transportation projects to produce a steady flow of construction projects by adding an advance project development element to the state transportation improvement program, beginning with the 2000 State Transportation Improvement Program.

(b) The advance project development element shall include only project development activities for projects that are eligible for inclusion in a state transportation improvement program.

(c) The fund estimate for each state transportation improvement program shall designate an amount to be available for the advance project development element, which shall be not more than 25 percent of the programmable resources estimated to be available for the first and second years following the period of the state transportation improvement program, subject to the formulas in Sections 164, 188 and 188.8 of the Streets and Highways Code.

(d) The department, transportation planning agencies, and county transportation commissions may nominate projects to the commission for inclusion in the advance project development element through submission of the regional transportation improvement program and the interregional transportation improvement program.

(e) The funds programmed in the advance project development element may be allocated within the period of the state transportation improvement program without regard to fiscal year.

(f) Not later than September 1, 2002, the commission shall report to the Governor and the Legislature on the impact of adding the advance project development element described in subdivision (a) with the funding level described in subdivision (c). The report shall evaluate whether the element has proven effective in producing a steady, deliverable stream of projects and whether addition of the element has resulted in any detrimental effects on the state's transportation system.

(g) The commission may develop guidelines to implement this section.

SEC. 5. Section 14529.3 is added to the Government Code, to read:

14529.3. (a) Funds received by the department as reimbursement for any work authorized by the Legislature through the annual budget process to be performed by the department under contract or other agreement for any local agency or entity or for any other state agency or state entity shall be deposited in the Transportation Reimbursable Work Account which is hereby created in the State Transportation Fund.

(b) Notwithstanding Section 13340 of the Government Code and without regard to fiscal years, the money in the account is hereby continuously appropriated to the department for the purpose of funding the performance of reimbursable work by the department.

(c) The department may not make expenditures from the account unless the department has determined that it has sufficient resources to complete both the reimbursable project and all projects under the state transportation improvement program in a timely manner.

SEC. 6. Section 14529.6 is added to the Government Code, to read:

14529.6. (a) (1) Notwithstanding any other provision of law, the commission may advance unallocated funds in the State Highway Account, in the form of loans, to transportation planning agencies, county transportation commissions, transit districts, city and county governments, and local transportation authorities for the advancement of projects eligible under the state transportation improvement program that are included within an adopted regional transportation plan.

(2) No application for a loan may be approved under this section for an agency that is not the approving authority for the county's submission to the state transportation improvement program unless the agency applies jointly with the approving authority.

(b) When considering loan applications, the commission shall ensure that all of the following conditions are met:

(1) Projects shall comply with the environmental impact report certification requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and associated rules and regulations, and have prepared an environmental impact report under that act.

(2) Total project costs shall be greater than ten million dollars ($10,000,000). In counties with populations of less than 500,000 persons, the commission may waive this requirement if 50 percent of a county's share for the current county share period made under Section 188.8 of the Streets and Highways Code is equal to or greater than the amount of project costs to be loaned.

(3) A fiscal assessment of the applicant's ability to repay a loan shall be made by an independent fiscal consultant selected by the applicant from a pre-qualified list of fiscal consultants approved jointly by the department and the commission. The department shall make a recommendation to the commission based on the analysis conducted by the independent fiscal consultant regarding each specific loan. Costs incurred for this assessment shall be paid by the applicant.

(4) The maximum amount of funds that may be loaned to any single county in any single loan for one or more projects shall be not more than 50 percent of the most recent regional-choice funding allocation made pursuant to Section 188.8 of the Streets and Highways Code, in an amount of not more than one hundred million dollars ($100,000,000).

(5) Loan repayments shall be made in cash from nonstate sources.

(6) Loans shall be repaid within four years from the date the loan is made.

(7) If a default occurs, 100 percent repayment of the principal and interest, plus a penalty charge of 5 percent of the outstanding principal, shall be required in the form of a reduction in the county's next allocation of county share funding made under Section 188.8 of the Streets and Highways Code. If that reduction is not sufficient to pay the principal, interest, and penalty due, further reduction shall be made from subsequent allocations until the outstanding amount is paid in full. Additionally, the defaulting county shall be ineligible for regional choice fund programming made under Section 188.8 of the Streets and Highways Code until the outstanding amount is paid in full.

(8) Interest rates on loans shall be set at the rate paid on money in the Pooled Money Investment Account during the period of time that the money is loaned.

(9) The commission shall approve or disapprove all loan applications not more than 30 days after the application is submitted.

(10) When approved by the commission, the money for the loan shall be transmitted by the department directly to the applicant not later than 30 days after approval.

(11) The total amount of outstanding loans approved under this program may not exceed five hundred million dollars ($500,000,000) at any one time.

(12) All payments on the principal of any loan plus interest or penalties paid shall be deposited in the State Highway Account.

(13) The department shall require in writing that projects funded under this section be under construction not later than six months after the date the loan funds are transmitted. If the project is not under construction on or before the date set by the department under this paragraph, the department shall require that the loan be paid back, with interest, not later than 10 days after the department notifies the recipient that repayment is due.

(c) The loan program created under this section shall automatically commence on a first-come, first-served basis whenever the State Highway Account cash balance exceeds four hundred million dollars ($400,000,000) and shall be suspended whenever the commission determines that moneys in the State Highway Account will reach a cash balance of less than four hundred million dollars ($400,000,000), based on historical experience, the need for state matching funds, and anticipated contractual needs, except that the commission may terminate the program at any time it deems termination to be the most prudent course of action. For purposes of informing potential loan applicants of the availability of funds to be loaned, the commission shall adopt, on January 15 and July 15 of each year, projections regarding the availability of funds to be loaned and the period of time during which funds will be available. The department shall report to the commission prior to each projection regarding the cash-flow needs of the state transportation improvement program for the following six months.

(d) Prior to loan approval, local agencies shall certify that other resources are not available to fund the project for which the loan is requested and that the agency does not intend to create an indirect arbitrage situation.

(e) Not later than 120 days from the effective date of the act that added this section during the 1999–2000 Regular Session, the commission, in consultation with the department and interested parties, shall propose guidelines and procedures to implement and expedite the loan program established under this section.

(f) Not later than 180 days from the effective date of the act that added this section during the 1999–2000 Regular Session, the commission, after a public hearing, shall adopt a uniform loan agreement package, including guidelines and implementation procedures, and shall begin operation of the loan program. The uniform loan agreement package shall describe loan repayment options, and all other terms and conditions necessary to protect the public interest as well as expedite the availability of funds for needed transportation improvements in the state. The commission shall make available to all interested parties the loan agreement associated with every specific loan made under this section for a period of 30 days prior to approval of those loans by the commission.

(g) The commission shall recommend to the Governor and the Legislature any suggested changes in the dollar limits required under subdivision (c) and any proposed solutions to any other issues relating to the program's impact on expediting delivery of transportation projects.

SEC. 7. Section 14529.11 is added to the Government Code, to read:

14529.11. (a) In order to assist in the delivery of high-priority transportation projects, as determined by the commission, or advance project development work, the commission shall adopt, not later than January 30, 2000, guidelines for an expedited process through which projects may comply with the requirement that a project study report be prepared in order for a project to be considered for inclusion in the state transportation improvement program. The expedited compliance process may be initiated whenever the commission finds it to be in the public interest.

(b) The guidelines required under subdivision (a) shall be developed in consultation with the department, the county agencies responsible for submission of projects for inclusion in the state transportation improvement program, and regional transportation planning agencies.

(c) The guidelines developed by the commission shall require that any request for use of the expedited compliance process be approved by the county agency responsible for submission of projects for inclusion in the state transportation improvement program and that each county approval be reviewed and approved by the department before being considered by the commission.

SEC. 8. Section 182.6 of the Streets and Highways Code is amended to read:

182.6. (a) Notwithstanding Sections 182 and 182.5, Sections 188, 188.8, and 825 do not apply to the expenditure of an amount of federal funds equal to the amount of federal funds apportioned to the state pursuant to that portion of subsection (b)(3) of Section 104, subsections (a) and (c) of Section 157, and subsection (d) of Section 160 of Title 23 of the United States Code which is allocated within the state subject to subsection (d)(3) of Section 133 of that code. These funds shall be known as the regional surface transportation program funds. The department, the transportation planning agencies, the county transportation commissions, and the metropolitan planning organizations may do all things necessary in their jurisdictions to secure and expend those federal funds in accordance with the intent of federal law and this chapter.

(b) The regional surface transportation program funds shall be apportioned by the department to the metropolitan planning organizations designated pursuant to Section 134 of Title 23 of the United States Code and, in areas where none has been designated, to the transportation planning agency designated pursuant to Section 29532 of the Government Code. The funds shall be apportioned in the manner and in accordance with the formula set forth in subsection (d)(3) of Section 133 of Title 23 of the United States Code, except that the apportionment shall be among all areas of the state. Funds apportioned under this subdivision shall remain available for three federal fiscal years, including the federal fiscal year apportioned.

(c) Where county transportation commissions have been created by Division 12 (commencing with Section 130000) of the Public Utilities Code, all regional surface transportation program funds shall be further apportioned by the metropolitan planning organization to the county transportation commission on the basis of relative population.

In the Monterey Bay region, all regional surface transportation program funds shall be further apportioned, on the basis of relative population, by the metropolitan planning organization to the regional transportation planning agencies designated under subdivision (b) of Section 29532 of the Government Code.

(d) The applicable metropolitan planning organization, county transportation commission, or transportation planning agency shall annually apportion the regional surface transportation program funds for projects in each county, as follows:

(1) An amount equal to the amount apportioned under the federal-aid urban program in federal fiscal year 1990–91 adjusted for population. The adjustment for population shall be based on the population determined in the 1990 federal census except that no county shall be apportioned less than 110 percent of the apportionment received in the 1990–91 fiscal year. These funds shall be apportioned for projects implemented by cities, counties, and

other transportation agencies on a fair and equitable basis based upon an annually updated five-year average of allocations. Projects shall be nominated by cities, counties, transit operators, and other public transportation agencies through a process that directly involves local government representatives.

(2) An amount not less than 110 percent of the amount that the county was apportioned under the federal-aid secondary program in federal fiscal year 1990–91, for use by that county.

(e) The department shall notify each metropolitan planning organization, county transportation commission, and transportation planning agency receiving an apportionment under this section, as soon as possible each year, of the amount of obligation authority estimated to be available for program purposes. The metropolitan planning organization and transportation planning agency, in cooperation with the department, congestion management agencies, cities, counties, and affected transit operators, shall select and program projects in conformance with federal law. The metropolitan planning organization and transportation planning agency shall submit its transportation improvement program prepared pursuant to Section 134 of Title 23 of the United States Code to the department for incorporation into the state transportation improvement program not later than August 1 of each even-numbered year beginning in 1994.

(f) Not later than July 1 of each year, the metropolitan planning organizations, and the regional transportation planning agencies, receiving obligational authority under this article shall notify the department of the projected amount of obligational authority that each entity intends to use during the remainder of the current federal fiscal year, including, but not limited to, a list of projects that will be obligated by the end of the current federal fiscal year. Any federal obligational authority that will not be used shall be redistributed by the department to other projects in a manner that ensures that the state will continue to compete for and receive increased obligational authority during the federal redistribution of obligational authority. If the department does not have sufficient federal apportionments to fully use excess obligational authority, the metropolitan planning organizations or regional transportation planning agencies relinquishing obligational authority shall make sufficient apportionments available to the department to fund alternate projects, when practical, within the geographical areas relinquishing the obligational authority. Notwithstanding this subdivision, the department shall comply with subsections (d)(3) and (f) of Section 133 of Title 23 of the United States Code.

(g) A regional transportation planning agency that is not designated as, nor represented by, a metropolitan planning organization with an urbanized area population greater than 200,000 pursuant to the 1990 federal census may exchange its annual apportionment received pursuant to this section on a dollar-for-dollar

basis for nonfederal State Highway Account funds, which shall be apportioned in accordance with subdivision (d).

(h) (1) If a regional transportation planning agency described in subdivision (g) does not elect to exchange its annual apportionment, a county located within the boundaries of that regional transportation planning agency may elect to exchange its annual apportionment received pursuant to paragraph (2) of subdivision (d) for nonfederal State Highway Account funds.

(2) A county not included in a regional transportation planning agency described in subdivision (g), whose apportionment pursuant to paragraph (2) of subdivision (d) was less than 1 percent of the total amount apportioned to all counties in the state may exchange its apportionment for nonfederal State Highway Account funds. If the apportionment to the county was more than $3^1/_2$ percent of the total apportioned to all counties in the state, it may exchange that portion of its apportionment in excess of $3^1/_2$ percent for nonfederal State Highway Account funds. Exchange funds received by a county pursuant to this section may be used for any transportation purpose.

(i) The department shall be responsible for closely monitoring the use of federal transportation funds, including regional surface transportation program funds to assure full and timely use. The department shall prepare a quarterly report for submission to the commission regarding the progress in use of all federal transportation funds. The department shall notify the commission and the appropriate implementation agency whenever there is a failure to use federal funds within the three-year apportionment period established under subdivision (b).

(j) The department shall provide written notice to implementing agencies when there is one year remaining within the three-year apportionment period established under subdivision (b) of this section.

(k) Within six months of the date of notification required under subdivision (j), the implementing agency shall provide to the department a plan to obligate funds that includes, but need not be limited to, a list of projects and milestones.

(*l*) If the implementing agency has not met the milestones established in the implementation plan required under subdivision (k), prior to the end of the three-year apportionment period established under subdivision (b), the commission shall redirect those funds for use on other transportation projects in the state.

SEC. 9. Section 182.7 of the Streets and Highways Code is amended to read:

182.7. (a) Notwithstanding Sections 182 and 182.5, Sections 188, 188.8, and 825 do not apply to the expenditure of an amount of federal funds equal to the amount of federal funds apportioned to the state pursuant to subsection (b)(2) of Section 104 of Title 23 of the United States Code. These funds shall be known as the congestion mitigation and air quality program funds and shall be expended in accordance

with Section 19 of Title 3 of the United States Code. The department, the transportation planning agencies, and the metropolitan planning organizations may do all things necessary in their jurisdictions to secure and expend those federal funds in accordance with the intent of federal law and this chapter.

(b) The congestion mitigation and air quality program funds, including any funds to which subsection (c) of Section 110 of Title 23 of the United States Code, as added by subdivision (a) of Section 1310 of Public Law 105-178, applies, shall be apportioned by the department to the metropolitan planning organizations designated pursuant to Section 134 of Title 23 of the United States Code and, in areas where none has been designated, to the transportation planning agency established by Section 29532 of the Government Code. The funds shall be apportioned to metropolitan planning organizations and transportation planning agencies responsible for air quality conformity determinations in federally designated air quality nonattainment and maintenance areas within the state in the manner and in accordance with the formula set forth in subsection (b)(2) of Section 104 of Title 23 of the United States Code. Funds apportioned under this subdivision shall remain available for three federal fiscal years, including the federal fiscal year apportioned.

(c) Notwithstanding subdivision (b), where county transportation commissions have been created by Division 12 (commencing with Section 130000) of the Public Utilities Code, all congestion mitigation and air quality program funds shall be further apportioned by the metropolitan planning organization to the county transportation commission on the basis of relative population within the federally designated air quality nonattainment and maintenance areas after first apportioning to the nonattainment and maintenance areas in the manner and in accordance with the formula set forth in subsection (b)(2) of Section 104 of Title 23 of the United States Code.

In the Monterey Bay region, all congestion mitigation and air quality improvement program funds shall be further apportioned, on the basis of relative population, by the metropolitan planning organization to the regional transportation planning agencies designated under subdivision (b) of Section 29532 of the Government Code.

(d) The department shall notify each metropolitan planning organization, transportation planning agency, and county transportation commission receiving an apportionment under this section, as soon as possible each year, of the amount of obligational authority estimated to be available for expenditure from the federal apportionment. The metropolitan planning organizations, transportation planning agencies, and county transportation commissions, in cooperation with the department, congestion management agencies, cities and counties, and affected transit operators, shall select and program projects in conformance with federal law. Each metropolitan planning organization and

transportation planning agency shall, not later than August 1 of each even-numbered year beginning in 1994, submit its transportation improvement program prepared pursuant to Section 134 of Title 23 of the United States Code to the department for incorporation into the state transportation improvement program.

(e) Not later than July 1 of each year, the metropolitan planning organizations and the regional transportation planning agencies receiving obligational authority under this section, shall notify the department of the projected amount of obligational authority that each entity intends to use during the remainder of the current federal fiscal year, including, but not limited to, a list of projects that will use the obligational authority. Any federal obligational authority that will not be used shall be redistributed by the department to other projects in a manner that ensures that the state will continue to compete for and receive increased obligational authority during the federal redistribution of obligational authority. If the department does not have sufficient federal apportionments to fully use excess obligational authority, the metropolitan planning organization or transportation planning agency relinquishing obligational authority shall make sufficient apportionments available to the department to fund alternate projects, when practical, within the geographical areas relinquishing the obligational authority. Notwithstanding this subdivision, the department shall comply with subsection (f) of Section 133 of Title 23 of the United States Code.

(f) The department shall be responsible for closely monitoring the use of federal transportation funds, including congestion management and air quality funds to assure full and timely use. The department shall prepare a quarterly report for submission to the commission regarding the progress in use of all federal transportation funds. The department shall notify the commission and the appropriate implementation agency whenever there is a failure to use federal funds within the three-year apportionment period established under subdivision (b).

(g) The department shall provide written notice to implementing agencies when there is one year remaining within the three-year apportionment period established under subdivision (b) of this section.

(h) Within six months of the date of notification required under subdivision (g), the implementing agency shall provide to the department a plan to obligate funds that includes, but need not be limited to, a list of projects and milestones.

(i) If the implementing agency has not met the milestones established in the implementation plan required under subdivision (h) above, prior to the end of the three-year apportionment period established under subdivision (b), the commission shall redirect those funds for use on other transportation projects in the state.

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 expedite, as soon as possible, the use of the excessively large cash balance in the State Highway Account in the State Transportation Fund and to direct the California Transportation Commission and Department of Transportation to accomplish the tasks necessary to put these taxpayer funds to work at the earliest possible date on needed transportation improvements, it is necessary that this act take effect immediately.

CHAPTER 784

An act to amend Sections 27 and 2027 of, and to add and repeal Section 4052.5 of, the Business and Professions Code, to amend Section 1798.16 of the Civil Code, to amend Sections 927.2, 927.5, 8331, 8557, 8558, 11015.5, and 11018.5 of, to add Sections 8588.8, 11006.5, and 12814 to, to add Article 9.8 (commencing with Section 8609) to Chapter 7 of Division 1 of Title 2 of, to add and repeal Section 6277 of, and to add and repeal Article 12 (commencing with Section 19991.15) of Chapter 2.5 of Part 2.6 of Division 5 of Title 2 of, the Government Code, to add Part 5.5 (commencing with Section 22350) to Division 2 of the Public Contract Code, and to amend Section 311.5 of the Public Utilities Code, relating to the Year 2000 Problem, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 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 Year 2000 Problem Good Government Omnibus Act of 1999.

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

(a) The Year 2000 Problem poses a substantial risk to the welfare of the residents, businesses, and State of California.

(b) Due to the risks surrounding the complex nature of the Year 2000 Problem, it is necessary for the state to recognize fully the potential political and social climate that may result from resource shortages and potential disruptions to the lives of California residents and to the course of normal trade and commerce within the State of California and with its business partners.

(c) Due to the time sensitive nature of the Year 2000 Problem, the state must initiate an aggressive and prudent preparation period with the express intent of minimizing any potential risk exposure to the state associated with the Year 2000 Problem.

(d) The risks facing the state associated with the Year 2000 Problem include, but are not limited to, the failure of systems that

may disrupt the state's ability to conduct business or provide services to the residents of the state.

(e) Identification and remediation of the Year 2000 Problem is the top priority information technology project for the state as specified by executive order of the Governor.

(f) The citizens of this state will be making many personal prudent preparation decisions regarding the way they will address the millennium change and the Year 2000 Problem. In doing so, they have a right to be presented with accurate information and leadership at a statewide level regarding the possible effects of the Year 2000 Problem and the precautions that should be taken.

(g) For purposes of this act, the term "Year 2000 Problem" has the same meaning as that set forth in subdivision (a) of Section 3269 of the Civil Code.

SEC. 3. It is the intent of the Legislature in enacting this act:

(a) That state employees who are working on Year 2000 Problem projects are able to work on those projects through the end of calendar year 1999 without losing earned vacation.

(b) To remove, when appropriate, state-administered networks that are not crucial to Year 2000 Problem remediation, compliance, contingency, or business continuity plan implementation, or public safety or health from the Internet and other public information arenas on the evening of December 31, 1999, and the morning of January 1, 2000.

(c) To give the Governor and the Office of Emergency Services the capability to respond adequately to the potential impacts of the Year 2000 Problem.

(d) To make every effort to have all valid claims made against the state paid promptly and accurately, without prejudice, to all Medi-Cal providers and recipients, nonprofit corporations, small businesses, and other business partners regardless of the potential for Year 2000 Problem failures.

(e) That, in providing for an integrated and effective procedure to combat potential complications resulting from the Year 2000 Problem, the Office of Emergency Services serves as the lead agency to direct strategy to ameliorate the effects of any Year 2000 Problem event and coordinate the implementation of continuity plans for business and event response actions pursuant to Executive Order D-3-99.

(f) That the residents of this state are provided with information that encourages the promotion of reasonable precautions and preparations that individuals should take before January 1, 2000.

(g) That reasonable precautions taken by residents in anticipation of the Year 2000 Problem reflect those that are recommended in preparation for a large winter storm, earthquake, or other major events, and, in addition, reflect the recommendations of the President's Council on Year 2000 Preparedness that individuals may wish to maintain an adequate supply of prescription medicine.

SEC. 4. Section 27 of the Business and Professions Code is amended to read:

27. (a) Every entity specified in subdivision (b), on or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by a board and other related enforcement action taken by a board relative to persons, businesses, or facilities subject to licensure or regulation by a board. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information shall not include personal information including home address (unless used as a business address), home telephone number, date of birth, or social security number.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Acupuncture Committee shall disclose information on its licensees.

(2) The Board of Behavioral Science Examiners shall disclose information on its licensees, including marriage, family and child counselors; licensed clinical social workers; and licensed educational psychologists.

(3) The Board of Dental Examiners shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of their licensees.

(5) The Board for Professional Engineers and Land Surveyors shall disclose information on its registrants and licensees.

(6) The Structural Pest Control Board shall disclose information on its licensees, including applicators; field representatives; and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair

dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(9) The cemetery program shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, crematories, and cremated remains disposers.

(10) The funeral program shall disclose information on its licensees, including, embalmers, funeral director establishments, and funeral directors.

(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

SEC. 5. Section 2027 of the Business and Professions Code is amended to read:

2027. (a) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, the board shall post on the Internet the following information regarding licensed physicians and surgeons:

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

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

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

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

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

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

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

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

SEC. 6. Section 4052.5 is added to the Business and Professions Code, to read:

4052.5. (a) Pursuant to Section 4064, during the period commencing December 1, 1999, and ending February 1, 2000, a

pharmacist may refill any refillable prescription subject to the number and terms of authorized refills, upon request of the person on whose behalf the prescription was written provided (1) the prescriber is unavailable to authorize the early dispensing of the medication refill, and (2) the refill medication dispensed does not exceed the dosage prescribed to sustain the patient with uninterrupted therapy during this period.

(b) The pharmacist shall not deny a refill request based upon his or her opinion regarding the likelihood of a Year 2000 Problem complication or failure. However, the pharmacist shall deny a refill request pursuant to subdivision (a) if, in the pharmacist's professional judgment, it is not in the patient's best interest.

(c) A person who has a prescription filled pursuant to this section shall pay the usual and customary charge of the pharmacy. However, a person who is covered by an insurer or health care service plan who has a prescription filled pursuant to this section shall obtain the refill from a contracted or participating pharmacy if required as a condition of coverage by the insurer or plan and shall pay the pharmacy if required as a condition of coverage by the insurer or plan and shall pay the copayment or coinsurance required by the insurer or plan. In the event that the copayment or coinsurance cannot be confirmed, or the claim cannot be adjudicated at the time of the purchase, the person shall pay the contract price negotiated by the person's insurer or plan, if enrolled, for the prescription, and, if applicable, submit his or her receipt directly to his or her insurer or plan for reimbursement.

(d) No person who has a prescription filled pursuant to this section shall be required by any insurer or health care service plan to pay a different deductible, copayment, or similar cost share based on that person's choice of pharmacy, provided that the pharmacy is a contracted provider for the insurer or health care plan.

(e) No person who has a prescription filled pursuant to this section shall be required by any insurer or health care service plan to pay a different deductible, copayment, or cost share other than the deductible, copayment, or cost share required by his or her insurer or health care service plan contract.

(f) For purposes of this section, the term "insurer" shall include, but not be limited to, the Medi-Cal program.

(g) For purposes of this section, the term "Year 2000 Problem" has the same meaning as that set forth in subdivision (d) of Section 3269 of the Civil Code.

(h) This section shall become inoperative on February 1, 2000, and as of January 1, 2001, is repealed, unless a later enacted statute that is enacted before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 1798.16 of the Civil Code is amended to read:

1798.16. (a) Whenever an agency collects personal information, the agency shall maintain the source or sources of the information,

unless the source is the data subject or he or she has received a copy of the source document, including, but not limited to, the name of any source who is an individual acting in his or her own private or individual capacity. If the source is an agency, governmental entity or other organization, such as a corporation or association, this requirement can be met by maintaining the name of the agency, governmental entity, or organization, as long as the smallest reasonably identifiable unit of that agency, governmental entity, or organization is named.

(b) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, whenever an agency electronically collects personal information, as defined by Section 11015.5 of the Government Code, the agency shall retain the source or sources or any intermediate form of the information, if either are created or possessed by the agency, unless the source is the data subject that has requested that the information be discarded or the data subject has received a copy of the source document.

(c) The agency shall maintain the source or sources of the information in a readily accessible form so as to be able to provide it to the data subject when they inspect any record pursuant to Section 1798.34. This section shall not apply if the source or sources are exempt from disclosure under the provisions of this chapter.

SEC. 8. Section 927.2 of the Government Code is amended to read:

927.2. The following definitions apply to this chapter:

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

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

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

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

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

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

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

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

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

(5) The state agency making the determination or the contractor involved has been subject to a computing or accounting failure related to the Year 2000 Problem.

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

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

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

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

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

(1) The principal office is located in California.

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

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

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

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

(k) "Year 2000 Problem" has the same meaning as that set forth in subdivision (a) of Section 3269 of the Civil Code.

SEC. 9. Section 927.5 of the Government Code is amended to read:

927.5. This chapter shall not apply to claims for reimbursement for health care services provided under the Medi-Cal program, unless the Medi-Cal health care services provider is a small business or nonprofit organization. In applying this section to claims submitted to the state, or its fiscal intermediary, by providers of services or equipment under the Medi-Cal program, payment for claims shall be due 30 days after a claim is received by the state or its fiscal intermediary, unless reasonable cause for nonpayment exists. With regard to Medi-Cal claims, reasonable cause shall include review of claims to determine medical necessity, review of claims for providers subject to special prepayment fraud and abuse controls, and claims that require review by the fiscal intermediary or State Department of Health Services due to special circumstances, including, but not

limited to, the Year 2000 Problem. Claims requiring special review as specified above shall not be eligible for a late payment penalty.

SEC. 10. Section 6277 is added to the Government Code, to read:

6277. (a) Notwithstanding subdivision (b) of Section 6253, it may be considered impracticable for a state agency to provide an electronic copy of a record if the agency is unable to provide the electronic copy due to the actuality of a Year 2000 Problem or resulting from the diversion of resources or personnel by the agency, in good faith, to address the Year 2000 Problem.

(b) (1) Subdivision (a) shall apply only to a state agency that is given specific approval by the Department of Information Technology to cite subdivision (a) as a reason for noncompliance with subdivision (b) of Section 6253.

(2) A state agency that does not first request and then subsequently receive specific approval from the Department of Information Technology pursuant to paragraph (1) shall comply with subdivision (b) of Section 6253.

(c) This section shall become inoperative on June 30, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute that is enacted on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 11. Section 8331 of the Government Code is amended to read:

8331. (a) State agencies shall make available on the Internet, on or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, a plain-language form through which individuals can register complaints or comments relating to the performance of that agency. The agency shall provide instructions on filing the complaint electronically, or on the manner in which to complete and mail the complaint form to the state agency, or both, consistent with whichever method the agency establishes for the filing of complaints.

(b) Any printed complaint form used by a state agency as part of the process of receiving a complaint against any licensed individual or corporation subject to regulation by that agency shall be made available by the agency on the Internet on or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99. The agency shall provide instructions on filing the complaint electronically, or on the manner in which to complete and mail the complaint form to the state agency, or both, consistent with whichever method the agency establishes for the filing of complaints.

(c) State agencies making a complaint form available on the Internet shall, to the extent feasible:

(1) Advise individuals calling the state agency to lodge a complaint of both of the following:

(A) The availability of the complaint form on the Internet.

(B) That many public libraries provide Internet access.

(2) Include on the Internet the location at which this information may be accessed in the telephone directory in order that citizens will be aware that they may contact the state agency via the Internet or by telephone.

(d) Public libraries, to the extent permitted through donations and other means, may do each of the following:

(1) Provide Internet access to their patrons.

(2) Advertise that they provide Internet access.

(e) Notwithstanding subdivision (a) of Section 11000, state agency as used in this section includes the California State University.

SEC. 12. Section 8557 of the Government Code is amended to read:

8557. (a) "Emergency Council" means the California Emergency Council.

(b) "State agency" means any department, division, independent establishment, or agency of the executive branch of the state government.

(c) "Political subdivision" includes any city, city and county, county, district, or other local governmental agency or public agency authorized by law.

(d) "Governing body" means the legislative body, trustees, or directors of a political subdivision.

(e) "Chief executive" means that individual authorized by law to act for the governing body of a political subdivision.

(f) "Disaster council" and "disaster service worker" have the meaning prescribed in Chapter 1 (commencing with Section 3201) of Part 1 of Division 4 of the Labor Code.

(g) "Public facility" means any facility of the state or a political subdivision, which facility is owned, operated, or maintained, or any combination thereof, through moneys derived by taxation or assessment.

(h) "Sudden and severe energy shortage" means a rapid, unforeseen shortage of energy, resulting from, but not limited to, events such as an embargo, sabotage, the Year 2000 Problem, or natural disasters, and which has statewide, regional, or local impact.

(i) "Year 2000 Problem" has the same meaning as that set forth in subdivision (a) of Section 3269 of the Civil Code.

SEC. 13. Section 8558 of the Government Code is amended to read:

8558. Three conditions or degrees of emergency are established by this chapter:

(a) "State of war emergency" means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.

(b) "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, complications resulting from the Year 2000 Problem, or other conditions, other than conditions resulting from a labor controversy or conditions causing a "state of war emergency," which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

(c) "Local emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, complications resulting from the Year 2000 Problem, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

SEC. 14. Section 8588.8 is added to the Government Code, to read:

8588.8. The Office of Emergency Services shall serve as the central agency in state government for the emergency reporting of all disasters and sudden and severe energy shortages related to, or potentially related to, the Year 2000 Problem and shall coordinate the notification of the appropriate state and local administering agencies that may be required to respond to those situations as they arise.

SEC. 15. Article 9.8 (commencing with Section 8609) is added to Chapter 7 of Division 1 of Title 2 of the Government Code, to read:

Article 9.8. The Year 2000 Problem and Disaster Preparedness

8609. State agencies granted authority by the Governor, the Business Continuity Task Force, the Emergency Preparedness Task Force, or the Executive Committee established by Executive Order D-3-99 to implement any type of disaster, contingency, or business

continuity plan may use volunteer workers. The volunteers shall be deemed disaster service workers for the purpose of workers' compensation under Chapter 3 (commencing with Section 3600) of Part 1 of Division 4 of the Labor Code.

8609.1. Any disaster preparedness or response official may be specifically identified by name and title in any disaster, contingency, or business continuity plan developed pursuant to Executive Order D-3-99 if such a plan incorporates aspects of any contingency plan previously developed regarding potential oil spills or toxic disasters pursuant to Article 3.5 (commencing with Section 8574.1) and Article 3.7 (commencing with Section 8574.16).

8609.2. (a) The authority for the management of the scene of an on-highway Year 2000 Problem disaster shall be vested in the appropriate law enforcement agency having primary traffic investigative authority on the highway where the incident occurs or in a local fire protection agency, as provided by Section 2454 of the Vehicle Code unless otherwise specified by a disaster, contingency, or business continuity plan developed pursuant to Executive Order D-3-99.

(b) Pursuant to subdivision (a), the Department of the California Highway Patrol shall develop response and on-scene procedures for Year 2000 Problem disasters that occur upon the highways based upon previous studies for these procedures, insofar as the procedures are not inconsistent with the overall plan for initial notification of disasters by public agencies and for after-incident evaluation and reporting.

(c) Plans developed pursuant to this section shall be made available to local governments and public safety officials upon request.

SEC. 16. Section 11006.5 is added to the Government Code, to read:

11006.5. (a) It is the intent of the Legislature that Year 2000 Problem identification and remediation be the top information technology priority for all state agencies and departments as specified by executive order of the Governor.

(b) It is the further intent of the Legislature to establish new dates of completion that are not in conflict with Year 2000 Problem remediation for all statutorily mandated automation and information technology systems that are not crucial to public health or safety.

(c) For the purposes of this section, the term "Year 2000 Problem" has the same meaning as that set forth in subdivision (a) of Section 3269 of the Civil Code.

SEC. 17. Section 11015.5 of the Government Code is amended to read:

11015.5. (a) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, every state agency, including the California State University, that utilizes any method, device, identifier, or other

data base application on the Internet to electronically collect personal information, as defined in subdivision (d), regarding any user shall prominently display the following at least one anticipated initial point of communication with a potential user, to be determined by each agency, and in instances when the specified information would be collected:

(1) Notice to the user of the usage or existence of the information gathering method, device, identifier, or other data base application.

(2) Notice to the user of the type of personal information that is being collected and the purpose for which the collected information will be used.

(3) Notice to the user of the length of time that the information gathering device, identifier, or other data base application will exist in the user's hard drive, if applicable.

(4) Notice to the user that he or she has the option of having his or her personal information discarded without reuse or distribution, provided that the appropriate agency official or employee is contacted after notice is given to the user.

(5) Notice to the user that any information acquired by the state agency, including the California State University, is subject to the limitations set forth in the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

(6) Notice to the user that state agencies shall not distribute or sell any electronically collected personal information, as defined in subdivision (d), about users to any third party without the permission of the user.

(7) Notice to the user that electronically collected personal information, as defined in subdivision (d), is exempt from requests made pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(8) The title, business address, telephone number, and electronic mail address, if applicable, of the agency official who is responsible for records requests, as specified by subdivision (b) of Section 1798.17 of the Civil Code, or the agency employee designated pursuant to Section 1798.22 of that code, as determined by the agency, who is responsible for ensuring that the agency complies with requests made pursuant to this section.

(b) A state agency shall not distribute or sell any electronically collected personal information about users to any third party without prior written permission from the user, except as required to investigate possible violations of Section 502 of the Penal Code or as authorized under the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code). Nothing in this subdivision shall be construed to prohibit a state agency from distributing electronically collected personal information to another state agency or to a public law enforcement organization in any case where the security of a network operated by

a state agency and exposed directly to the Internet has been, or is suspected of having been, breached.

(c) A state agency shall discard without reuse or distribution any electronically collected personal information, as defined in subdivision (d), upon request by the user.

(d) For purposes of this section:

(1) "Electronically collected personal information" means any information that is maintained by an agency that identifies or describes an individual user, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, medical or employment history, password, electronic mail address, and information that reveals any network location or identity, but excludes any information manually submitted to a state agency by a user, whether electronically or in written form, and information on or relating to individuals who are users serving in a business capacity, including, but not limited to, business owners, officers, or principals of that business.

(2) "User" means an individual who communicates with a state agency or with an agency employee or official electronically.

(e) Nothing in this section shall be construed to permit an agency to act in a manner inconsistent with the standards and limitations adopted pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) or the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

SEC. 18. Section 11018.5 of the Government Code is amended to read:

11018.5. (a) The Department of Real Estate, on or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code), including information relative to suspensions and revocations of licenses issued by that state agency and other related enforcement action taken against persons, businesses, or facilities subject to licensure or regulation by a state agency.

(b) The Department of Real Estate shall disclose information on its licensees, including real estate brokers and agents, on the Internet that is in compliance with the department's public record access guidelines.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

SEC. 19. Section 12814 is added to the Government Code, to read:

12814. (a) Notwithstanding any other provision of law, each state agency or department or political subdivision of the state may isolate any of its automated applications, computer hardware, or networking devices from nonproprietary networks, input streams, power sources, or other devices at any time and for any duration from 3 a.m. on December 31, 1999, to 12 p.m. on January 1, 2000, inclusive, if the Governor, the Chief Information Officer, upon designation of the Governor, or the Governor's Year 2000 Problem Executive Council, as established in Executive Order D-3-99, grants a written authorization for the proposed isolation.

(b) For the purposes of this section, the term "Year 2000 Problem" has the same meaning as that set forth in subdivision (a) of Section 3269 of the Civil Code.

SEC. 20. Article 12 (commencing with Section 19991.15) is added to Chapter 2.5 of Part 2.6 of Division 5 of Title 2 of the Government Code, to read:

Article 12. Year 2000 Work

19991.15. Notwithstanding any other provision of law, an employee shall carry over more vacation credits than the prescribed maximum if the employee is prevented from taking vacation because the employee is assigned to work related to the Year 2000 Problem.

19991.16. (a) All Year 2000 Problem related work shall be considered work of a priority or critical nature over an extended period of time.

(b) All work performed by an employee who is assigned to the Year 2000 Worker Pool shall be considered work related to the Year 2000 Problem for purposes of this article.

19991.17. The carryover of vacation credits in successive years shall be approved by the appointing power as extenuating circumstances for each employee who is prevented from taking vacation because the employee is assigned to work related to the Year 2000 Problem.

19991.18. For purposes of this article, the term "Year 2000 Problem" has the same meaning as that set forth in subdivision (a) of Section 3269 of the Civil Code.

19991.19. This article shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 21. Part 5.5 (commencing with Section 22350) is added to Division 2 of the Public Contract Code, to read:

PART 5.5. THE YEAR 2000 PROBLEM VENDOR COMPLIANCE AND INFORMATION PRACTICES POLICY

22350. This part shall be known and may be cited as the Year 2000 Problem Vendor Compliance and Information Practices Policy.

22351. For purposes of this part, the following definitions apply:

(a) "Contractor" means any individual, corporation, partnership, business entity, joint venture or association, or any other organization or any combination thereof, that has entered into a contractual relationship with any public entity.

(b) "Person" means any individual, corporation, partnership, business entity, joint venture, or association, or any other organization or any combination thereof.

(c) "Year 2000 Problem" has the same meaning as that set forth in subdivision (a) of Section 3269 of the Civil Code.

22352. It is the policy of this state to do business solely with those persons and contractors that, subsequent to entering into any contract with a public entity, recognize the importance and urgency of the Year 2000 Problem, respond to inquiries from public entities regarding Year 2000 Problem compliance for all goods or services provided to the state, and participate in the disclosure of information to public entities regarding Year 2000 Problem compliance for all goods and services provided to the state.

22353. (a) Any public entity may submit a written request for information regarding the Year 2000 Problem to any contractor who is under contract to provide, or was at any time under contract to provide, any project, materials, supplies, equipment, services, or real property, as described in Part 2 (commencing with Section 10100).

(b) Each request made pursuant to subdivision (a) shall include all of the following information:

(1) A direct citation of the authority to make a request pursuant to this part.

(2) Notification of the policy of the state regarding the Year 2000 Problem, as set forth in Section 22352.

(3) Notification of the responsible bidder provisions that exist under the State Contract Act (Part 2 (commencing with Section 10100)).

22355. Nothing in this part shall be construed to require any person or contractor to disclose any information that qualifies for protection as a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code.

SEC. 22. Section 311.5 of the Public Utilities Code is amended to read:

311.5. (a) (1) Prior to commencement of any meeting at which commissioners vote on items on the public agenda the commission shall make available to the public copies of the agenda, and upon request, any agenda item documents that are proposed to be

considered by the commission for action or decision at a commission meeting.

(2) In addition, the commission shall publish the agenda, agenda item documents, and adopted decisions in a manner that makes copies of them easily available to the public, including, commencing publishing those documents on the Internet on or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99. Publication of the agenda and agenda item documents shall occur on the Internet at the same time as the written agenda and agenda item documents are made available to the public.

(b) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, the commission shall publish and maintain all of its decisions and resolutions on the Internet. That publication shall occur within 10 days of the adoption of a decision or resolution by the commission.

(c) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, the commission shall publish at its Internet site the then-current version of its general orders and Rules of Practice and Procedure.

(d) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, the commission shall publish and maintain all of its rulings on the Internet. The commission shall maintain those rulings at its site until final disposition, including disposition of any judicial appeals, of the respective proceedings in which the rulings were issued.

(e) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, the commission shall publish and maintain a docket card that shall list, by title and date of filing or issuance, all documents filed and all decisions or rulings issued in those proceedings on the Internet. The commission shall maintain the docket card until final disposition, including disposition of any judicial appeals, of the corresponding proceedings.

SEC. 23. (a) In addition to the reasons listed in Section 19050.8 of the Government Code, the State Personnel Board may prescribe and apply rules governing the temporary assignment or loan of employees within an agency or between jurisdictions to enable an agency to meet challenges posed by the Year 2000 Problem.

(b) (1) Within 30 days of the effective date of this act, the State Personnel Board shall establish guidelines for a Year 2000 Problem Worker Pool, established by the Department of Personnel Administration pursuant to subdivision (c), to fill the needs of various appointing powers for temporary help regarding Year 2000 Problem remediation.

(2) The board may provide by rule for conditions of employment in the Year 2000 Problem Worker Pool. If the board finds that it is in the best interests of the state, it may limit the pool to those classes in which there is a level of demonstrated expertise.

(3) Within not less than three months, or more than one year, after the board finds that for the purpose of this section there is no longer an emergency, all Year 2000 Problem Worker Pool assignments shall be ended as the board deems appropriate.

(c) (1) The Department of Personnel Administration shall establish a Year 2000 Problem Worker Pool to fill the needs of various appointing powers for temporary help regarding Year 2000 Problem remediation.

(2) Notwithstanding Section 19211 of the Government Code or State Personnel Board guidelines developed pursuant to Section 19210 of the Government Code, the pool shall be composed of all employees that have been involved in a Year 2000 Problem remediation project at any state agency or department and any additional employees specified by the Department of Information Technology.

(3) Upon a request from any appointing power or upon the request of the Department of Information Technology on behalf of any agency or department for temporary help that can be filled from those employees identified in the Year 2000 Problem Worker Pool, the department shall assign the persons that are needed. Upon assignment, the appointing power may be charged pursuant to Section 11253 or Sections 11256 to 11263, inclusive, of the Government Code for the cost of the service.

(4) If the provisions of this subdivision are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 of the Government Code, the memorandum of understanding shall be controlling.

(5) For all purposes of Part 2.6 (commencing with Section 19815) of Division 5 of Title 2 of the Government Code, these persons are employees of their original department and not of the appointing power to which they are assigned. The procedure authorized by this section for procuring temporary Year 2000 Problem help is an alternative to other procedures for that purpose authorized by Part 2.6 or department rule and nothing in this section nor in applicable department regulations prevents an appointing power from following those other procedures.

(6) The department shall make all necessary rules and regulations to carry out the purposes of this subdivision.

(7) (A) Agencies that are not required to submit feasibility study reports to the Department of Information Technology, and constitutional officers and their employees upon written notification from the constitutional officer to the Department of Information Technology, shall be exempted, from the requirements listed in

subdivisions (a) and (b) and paragraphs (1) to (6), inclusive, of this subdivision.

(B) Exemptions granted pursuant to subparagraph (A) shall prohibit the agency from using any workers in the Year 2000 Worker Pool unless authorized by the Department of Information Technology.

(d) For the purposes of this section, the term "Year 2000 Problem" has the same meaning as that set forth in subdivision (a) of Section 3269 of the Civil Code.

SEC. 24. (a) It is the intent of the Legislature that state agencies, in anticipation of the Year 2000 Problem, pay properly submitted, undisputed invoices and automatically calculate claims schedules prior to January 1, 2000.

(b) Notwithstanding any other provision of law, the state may print or post electronically checks, centralized treasury checks, warrants, employee paychecks, benefits checks for all entitlement and means-tested social programs, and all other claims that would otherwise occur on or after January 1, 2000, within the month of December 1999.

(c) This section shall not compel, nor prohibit disbursement of funds in a tax year in a manner that is not consistent with current practice.

(d) Notwithstanding any other provision of law, this section shall apply to the Controller and all state agencies, including, but not limited to, the Public Employees' Retirement System, the State Teachers' Retirement System, the Treasurer, and the Department of General Services.

(e) The Controller may negotiate with agencies that produce a high volume of claims to determine if actions pursuant to subdivision (b) are necessary.

(f) Any checks or warrants that are printed or posted pursuant to subdivision (b) may be held until the normal issue date that is on or after January 1, 2000.

(g) For purposes of this section, the term "Year 2000 Problem" has the same meaning as that set forth in subdivision (a) of Section 3269 of the Civil Code.

SEC. 25. The repeal of Article 12 (commencing with Section 19991.15) of Chapter 2.5 of Part 2.6 of Division 5 of Title 2 of the Government Code shall not affect any employee's vacation carryover or any other related determinations made under that article prior to its repeal.

SEC. 26. Section 4 of this act, which amends Section 27 of the Business and Professions Code, shall not become operative if Senate Bill 1308 of the 1999–2000 Regular Session is enacted, amends Section 27 of the Business and Professions Code, and becomes effective on or before January 1, 2000.

SEC. 27. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within

the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to significantly reduce the risks posed by the Year 2000 Problem to the livelihood of Californians, the ability of industry to conduct business in the state, and the ability of the state to mitigate possible systems failures that would damage the state's ability to do business with and provide for its citizens, it is necessary that this act take effect immediately.

CHAPTER 785

An act to amend Sections 20350, 20391, 21073.5, 21201, 21357, 21363, 21370, 21461, 21465, 21497, 21507, 21751, 22774, 22970.2, 75101, 75520, 75521, and 75523 of, to add Section 22013.77 to, and to repeal Sections 20417, 20736, and 20992 of, the Government Code, relating to retirement.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 20350 of the Government Code is amended to read:

20350. Notwithstanding Section 20638, if a member on deferred retirement from this system is eligible to retire for service from a reciprocal retirement system and does so retire prior to the time the member becomes entitled to retire under this system, his or her retirement shall be deemed a concurrent retirement for purposes of computing final compensation under Section 20638.

SEC. 2. Section 20391 of the Government Code is amended to read:

20391. "State peace officer/firefighter member" means:

(a) All persons in the Board of Prison Terms, the Department of Consumer Affairs, the Department of Developmental Services, the Department of Health Services, the Department of Toxic Substances Control, the Horse Racing Board, the Department of Industrial Relations, the Department of Insurance, the Department of Mental Health, the Department of Motor Vehicles, the Department of Social Services employed with the class title of Special Investigator (Class Code 8553), Senior Special Investigator (Class Code 8550), and Investigator Assistant (Class Code 8554) who have been designated as peace officers as defined in Sections 830.2 and 830.3 of the Penal Code.

(b) All persons in the Department of Alcoholic Beverage Control employed with the class title Investigator Trainee, Alcoholic Beverage Control (Class Code 7553), Investigator I, Alcoholic

Beverage Control, Range A and B (Class Code 7554), and Investigator II, Alcoholic Beverage Control (Class Code 7555) who have been designated as peace officers as defined in Sections 830.2 and 830.3 of the Penal Code.

(c) All persons within the Department of Justice who are state employees as defined in subdivision (c) of Section 3513 and who have been designated as peace officers and performing investigative duties.

(d) All persons in the Department of Parks and Recreation employed with the class title of Park Ranger (Intermittent) (Class Code 0984) who have been designated as peace officers as defined in Sections 830.2 and 830.3 of the Penal Code. Any person so designated may elect, within 90 days of notification by the board, to remain subject to the service retirement benefit and normal rate of contribution applicable prior to July 3, 1984, by filing an irrevocable notice of election with the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21353 only for service also included in the federal system.

(e) All persons in the Franchise Tax Board who have been designated as peace officers in subdivision (s) of Section 830.3 of the Penal Code. A member who is reclassified from state miscellaneous to state peace officer/firefighter pursuant to this subdivision may make an irrevocable election in writing to remain subject to the miscellaneous service retirement benefit and the normal rate of contribution by filing a notice of election with the board within 90 days of notification by the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21353 only for service included in the federal system.

SEC. 2.5. Section 20391 of the Government Code is amended to read:

20391. "State peace officer/firefighter member" means:

(a) All persons in the Board of Prison Terms, the Department of Consumer Affairs, the Department of Developmental Services, the Department of Health Services, the Department of Toxic Substances Control, the Horse Racing Board, the Department of Industrial Relations, the Department of Insurance, the Department of Mental Health, the Department of Motor Vehicles, the Department of Social Services employed with the class title of Special Investigator (Class Code 8553), Senior Special Investigator (Class Code 8550), and Investigator Assistant (Class Code 8554) who have been designated as peace officers as defined in Sections 830.2 and 830.3 of the Penal Code.

(b) All persons in the Department of Alcoholic Beverage Control employed with the class title Investigator Trainee, Alcoholic Beverage Control (Class Code 7553), Investigator I, Alcoholic Beverage Control, Range A and B (Class Code 7554), and Investigator II, Alcoholic Beverage Control (Class Code 7555) who

have been designated as peace officers as defined in Sections 830.2 and 830.3 of the Penal Code.

(c) All persons within the Department of Justice who are state employees as defined in subdivision (c) of Section 3513 and who have been designated as peace officers and performing investigative duties.

(d) All persons in the Department of Parks and Recreation employed with the class title of Park Ranger (Intermittent) (Class Code 0984) who have been designated as peace officers as defined in Sections 830.2 and 830.3 of the Penal Code.

(e) All persons in the Franchise Tax Board who have been designated as peace officers in subdivision (s) of Section 830.3 of the Penal Code.

(f) A member who is employed in a position that is reclassified to state peace officer/firefighter pursuant to this section may make an irrevocable election in writing to remain subject to the service retirement benefit and the normal rate of contribution applicable prior to reclassification by filing a notice of election with the board within 90 days of notification by the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21353 or 21354.1, as applicable, only for service included in the federal system.

SEC. 3. Section 20417 of the Government Code is repealed.

SEC. 4. Section 20736 of the Government Code is repealed.

SEC. 5. Section 20992 of the Government Code is repealed.

SEC. 6. Section 21073.5 of the Government Code is amended to read:

21073.5. (a) A state Second Tier member, who meets the eligibility definition prescribed in subdivision (c) of Section 21071 may elect to be subject to Section 21353.5 at any time while he or she is in the employment of the state. Upon becoming subject to Section 21353.5, the active member may elect to have his or her past Second Tier service credited under Section 21353.5.

(b) (1) Notwithstanding any other provision of this article, a member designated as a state safety member pursuant to Section 20405.1 or 20405.3 may elect to have past Second Tier service subject to Section 21076 or 21077 credited under Section 21353.5. This election may be made at any time while the member is employed by the state, subject to election procedures to be established and communicated by the board.

(2) The election described in paragraph (1) shall also be provided to a member designated as a state safety member pursuant to Section 20405.1 or 20405.3 who retired before the date the election was actually made available by the board.

(3) The election described in paragraph (1) shall also be provided to the beneficiary eligible for a continuing allowance upon the death of a member, provided the member had been designated as a state safety member pursuant to Section 20405.1 or 20405.3 but had died

before making the election that would have been provided by the board.

(4) The election described in paragraph (2) or (3) shall be made within 60 days after the mailing date on the election notice sent by the board to the retired member or the member's beneficiary.

(c) A member or beneficiary who elects to receive credit for past service shall pay all reasonable administrative costs and the amount that will be equivalent to the difference between the actuarial present value of the Second Tier service that had accrued to the member's credit and the actuarial present value for the same service had it been credited under Section 21353.5, including interest if deemed necessary, in accordance with the method to be established by the board. The amount shall be contributed in a lump sum or by installments over a period and subject to minimum payments as may be prescribed by regulations of the board. Payments for administrative costs shall be credited to the current appropriation for support of the board and available for expenditures by the board to fund positions deemed necessary by the board to implement this section.

SEC. 7. Section 21201 of the Government Code is amended to read:

21201. When any person is reinstated from industrial disability retirement under Sections 21191 and 21197, his or her retirement allowance shall be canceled immediately, and he or she shall become a member of this system as of the date of reinstatement. His or her individual account shall be credited with an amount that is the actuarial equivalent of his or her annuity at the date of reinstatement, not to exceed the amount of his or her accumulated contributions as it was at the date of retirement. Upon subsequent retirement, the board shall resume the payment of his or her previous industrial disability retirement allowance using the highest compensation earnable during any period of membership, notwithstanding Section 20036, to recalculate the industrial disability retirement allowance. The member shall receive, in addition to the disability retirement allowance from the employment in which he or she was granted the industrial disability retirement, an annuity purchased with his or her accumulated normal contributions made in respect to other employment covered by this system. If the member is qualified for service retirement, he or she shall receive his or her service retirement allowance, in lieu of the industrial retirement allowance, if the service retirement allowance is greater.

SEC. 8. Section 21357 of the Government Code is amended to read:

21357. (a) For a member reinstated from service retirement or partial service retirement, the current service pension, or current and prior service pensions, as the case may be, upon his or her service retirement subsequent to the reinstatement, shall be the sum of (1) a current service pension calculated on the basis of service rendered

after reinstatement in accordance with the formula applicable to him or her in that service and membership, plus, (2) if the subsequent retirement occurs before he or she renders, after his or her reinstatement, at least one year of state service credited under this system, or if the subsequent service or disability retirement occurs after his or her reinstatement from service or disability retirement pursuant to an election under Section 21465 or 21465.5, his or her current service pension, or current and prior service pensions, as the case may be, as it was prior to his or her reinstatement, adjusted for any service on which the pension was based that was included in coverage of the federal system during reinstatement according to the formula applicable to the service in employment for which he or she was retired, and further adjusted according to any change after reinstatement in the provisions governing the calculation of his or her pension that would have applied to him or her had he or she continued in retirement but been subject to the formula applied in the first adjustment; or, for state miscellaneous and state industrial service subject to Section 21076, in lieu of (2), plus (3) a current service pension, or current and prior service pensions, as the case may be, as it would have been prior to his or her reinstatement under the formula applicable to Section 21076, adjusted for any service on which the pension was based that was included in coverage of the federal system during reinstatement according to the formula applicable to the service in employment for which he or she was retired, and further adjusted according to any change after reinstatement in the provisions governing the calculations of his or her pension that would have applied to him or her had he or she continued in retirement and been subject to the formula applicable to Section 21076, or if he or she has rendered one year or more of state service after reinstatement, in lieu of (2) or (3), plus (4), a current service pension based on current service rendered prior to reinstatement, calculated on the basis of the formula currently applicable to the employment in which the service was rendered but on the basis of an age taken to the preceding completed quarter year but not less than the minimum retirement age applicable to him or her at his or her last retirement and determined by deducting from his or her age at his or her subsequent retirement, the aggregate time during which he or she was under retirement. For a member reinstated from nonindustrial disability retirement, the current service pension upon his or her service retirement after attaining an age one year less than the minimum age at which he or she could have retired without an actuarial discount because of age in the employment from which he or she was last retired, or upon his or her disability retirement after attaining the minimum age, and subsequent to reinstatement, shall be calculated in the manners described in the preceding sentence, but the age determined upon subsequent retirement after rendering at least one year of state service credited under this system shall not be taken at less than one

year less than the minimum age if the subsequent retirement is for service, or the minimum age if the retirement is for disability.

(b) The current service pension otherwise payable under this section to a member whose allowance prior to reinstatement was paid pursuant to his or her election under Section 21461 shall be reduced by the actuarial equivalent, on the date of retirement subsequent to reinstatement, of the amount (converted as below), if any, by which:

(1) The total amount paid in the period during which a temporary annuity was included in the payments, reduced by the total amount that would have been payable during that period had the election not been made, exceeds

(2) The excess of the total amount that would have been payable, had the election not been made, during the time subsequent to that period and prior to reinstatement, over the total amount actually paid during that time.

The amount determined by the above formula shall be converted to an amount equaling the actuarial equivalent on the date of reinstatement and this latter amount shall be the basis of the actuarial equivalent on the date of retirement subsequent to reinstatement.

Actuarial equivalents required by this section shall be based on the interest rate and mortality tables in use by this system on the date of retirement subsequent to reinstatement.

(c) Notwithstanding this section, or any other provision of this part, the current service pension payable to any member subject to this section who rendered one year or more of state service credited under this system after reinstatement on retirement for service subsequent to reinstatement from service retirement for any credited service for which a current service pension was paid prior to reinstatement shall not be less than the current service pension that would be payable on the date of the subsequent retirement had the member not been reinstated. For state miscellaneous and state industrial service subject to Section 21076, the current service pension payable for any credited service for which a current service pension was paid prior to reinstatement shall not be less than the current service pension that would have been payable on the date of the subsequent retirement had the member's retirement been subject to the formula under Section 21076 and had not been reinstated, adjusted, however, by any reduction under this section because of an election under Section 21461 and, for any service so credited that was included in coverage of the federal system during reinstatement, according to the formula applicable to the service in employment from which he or she was retired.

SEC. 9. Section 21363 of the Government Code is amended to read:

21363. (a) The combined current and prior service pensions for state peace officer/firefighter members subject to this section with respect to state peace officer/firefighter service and the combined

current and prior service pensions for local safety members with respect to local safety service rendered to a contracting agency that is subject to this section is a pension derived from the contributions of the employer sufficient when added to the service retirement annuity that is derived from the accumulated normal contributions of the state peace officer/firefighter member at the date of his or her retirement to equal the fraction of one-fiftieth of his or her final compensation set forth opposite his or her age at retirement taken to the preceding completed quarter year, in the following table, multiplied by the number of years of state peace officer/firefighter service subject to this section with which he or she is credited at retirement.

Age at Retirement	Fraction
50	1.0000
50 1/4	1.0125
50 1/2	1.0250
50 3/4	1.0375
51	1.0500
51 1/4	1.0625
51 1/2	1.0750
51 3/4	1.0875
52	1.1000
52 1/4	1.1125
52 1/2	1.1250
52 3/4	1.1375
53	1.1500
53 1/4	1.1625
53 1/2	1.1750
53 3/4	1.1875
54	1.2000
54 1/4	1.2125
54 1/2	1.2250
54 3/4	1.2375
55 and over	1.2500

(b) In no event shall the current service pension and the combined current and prior service pensions under this section for all service to all employers exceed an amount that, when added to the service retirement annuity related to that service, equals 75 percent of final compensation. For state members who retire on or after January 1, 1995, and with respect to service for all state employers under this section, the benefit shall not exceed 80 percent of final

compensation. If the pension relates to service to more than one employer, or this section and Section 21369, and would otherwise exceed that maximum, the pension payable with respect to each section or employer shall be reduced in the same proportion as the allowance bears to the total allowance computed as though there were no limit, so that the total of the pensions shall equal the maximum. Where a state member retiring on or after January 1, 1995, has service under this section with both state and local agency employers, the 80-percent limit shall apply and the additional benefit shall be funded by increasing the member's pension payable with respect to the state employer.

(c) The Legislature reserves, with respect to any member subject to this section, the right to provide for the adjustment of industrial disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate because of the earlier age of service retirement made possible by the benefits under this section.

(d) This section may be applied to related supervisory classes or confidential positions for the respective bargaining units specified in this section.

(e) (1) This section shall be operative with respect to state peace officer/firefighter members in Corrections Bargaining Unit No. 6, Protective Services and Public Safety Bargaining Unit No. 7, or Firefighters Bargaining Unit No. 8, in accordance with a memorandum of understanding reached between the state and the exclusive bargaining agent in the respective unit pursuant to Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1.

(2) This section also shall be operative with respect to the state peace officer/firefighter members employed by a California State University police department who are in Public Safety Unit No. 8 in accordance with a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

(3) This section shall also be operative with respect to a "state peace officer/firefighter member" defined in subdivision (a) of Section 20396 if authorized by, and in accordance with, a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

(4) Nothing in this section or in any other provision of law affected by Chapter 1320 of the Statutes of 1984 or Chapter 234 of the Statutes of 1986 shall be construed as authorizing any future negotiation with respect to whether or not any bargaining unit specified in this section whose memorandum of understanding was previously approved by

the Legislature pursuant to law and this section, shall continue to remain within the state peace officer/firefighter membership category.

(5) The operative date of this section with respect to members in each of the bargaining units specified in this section shall be as provided for in the memorandum of understanding.

(6) This section shall not apply to a person whose effective date of retirement is prior to the operative date of this section with respect to the bargaining unit of the person.

(f) This section shall be known as, and may be cited as the State Peace Officers' and Fire Fighters' Retirement Act.

(g) The Legislature reserves the right to subsequently modify or amend this part in order to completely effectuate the intent and purposes of this section and the right to not provide any new comparable advantages if disadvantages to employees result from any modification or amendment.

(h) This section shall not apply to a contracting agency nor its employees until, first, it is agreed to in a written memorandum of understanding entered into by an employer and representatives of employees and, second, the contracting agency elects to be subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local safety member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section. However, this section shall not apply to any local safety member in the employ of an employer not subject to this section on January 1, 2000.

SEC. 9.2. Section 21363 of the Government Code is amended to read:

21363. (a) The combined current and prior service pensions for state peace officer/firefighter members subject to this section with respect to state peace officer/firefighter service and the combined current and prior service pensions for local safety members with respect to local safety service rendered to a contracting agency that is subject to this section is a pension derived from the contributions of the employer sufficient when added to the service retirement annuity that is derived from the accumulated normal contributions of the state peace officer/firefighter member at the date of his or her retirement to equal the fraction of one-fiftieth of his or her final compensation set forth opposite his or her age at retirement taken to the preceding completed quarter year, in the following table, multiplied by the number of years of state peace officer/firefighter service subject to this section with which he or she is credited at retirement.

Age at Retirement	Fraction
50	1.0000
50 1/4	1.0125
50 1/2	1.0250
50 3/4	1.0375
51	1.0500
51 1/4	1.0625
51 1/2	1.0750
51 3/4	1.0875
52	1.1000
52 1/4	1.1125
52 1/2	1.1250
52 3/4	1.1375
53	1.1500
53 1/4	1.1625
53 1/2	1.1750
53 3/4	1.1875
54	1.2000
54 1/4	1.2125
54 1/2	1.2250
54 3/4	1.2375
55 and over	1.2500

(b) In no event shall the current service pension and the combined current and prior service pensions under this section for all service to all employers exceed an amount that, when added to the service retirement annuity related to that service, equals 75 percent of final compensation. For state members who retire on or after January 1, 1995, and with respect to service for all state employers under this section, the benefit shall not exceed 80 percent of final compensation. If the pension relates to service to more than one employer, or this section and Section 21369, and would otherwise exceed that maximum, the pension payable with respect to each section or employer shall be reduced in the same proportion as the allowance bears to the total allowance computed as though there were no limit, so that the total of the pensions shall equal the maximum. Where a state member retiring on or after January 1, 1995, has service under this section with both state and local agency employers, the 80-percent limit shall apply and the additional benefit shall be funded by increasing the member's pension payable with respect to the state employer.

(c) The Legislature reserves, with respect to any member subject to this section, the right to provide for the adjustment of industrial

disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate because of the earlier age of service retirement made possible by the benefits under this section.

(d) This section may be applied to related supervisory classes or confidential positions for the respective bargaining units specified in this section.

(e) (1) This section shall be operative with respect to state peace officer/firefighter members in Corrections Bargaining Unit No. 6, Protective Services and Public Safety Bargaining Unit No. 7, or Firefighters Bargaining Unit No. 8, in accordance with a memorandum of understanding reached between the state and the exclusive bargaining agent in the respective unit pursuant to Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1.

(2) This section also shall be operative with respect to the state peace officer/firefighter members employed by a California State University police department who are in Public Safety Unit No. 8 in accordance with a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

(3) This section shall also be operative with respect to a "state peace officer/firefighter member" defined in subdivision (a) of Section 20396 if authorized by, and in accordance with, a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

(4) Nothing in this section or in any other provision of law affected by Chapter 1320 of the Statutes of 1984 or Chapter 234 of the Statutes of 1986 shall be construed as authorizing any future negotiation with respect to whether or not any bargaining unit specified in this section whose memorandum of understanding was previously approved by the Legislature pursuant to law and this section, shall continue to remain within the state peace officer/firefighter membership category.

(5) The operative date of this section with respect to members in each of the bargaining units specified in this section shall be as provided for in the memorandum of understanding.

(6) With the exception of state peace officer/firefighter members for service rendered for the Legislature or judicial branch of government, this section shall apply to state peace officer/firefighter members who are not employed by the state on or after January 1, 2000.

(f) This section shall be known as, and may be cited as the State Peace Officers' and Fire Fighters' Retirement Act.

(g) The Legislature reserves the right to subsequently modify or amend this part in order to completely effectuate the intent and purposes of this section and the right to not provide any new comparable advantages if disadvantages to employees result from any modification or amendment.

(h) This section shall not apply to a contracting agency nor its employees until, first, it is agreed to in a written memorandum of understanding entered into by an employer and representatives of employees and, second, the contracting agency elects to be subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local safety member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section. However, this section shall not apply to any local safety member in the employ of an employer not subject to this section on January 1, 2000.

SEC. 9.4. Section 21363 of the Government Code is amended to read:

21363. (a) The combined current and prior service pensions for state peace officer/firefighter members subject to this section with respect to state peace officer/firefighter service and the combined current and prior service pensions for local safety members with respect to local safety service rendered to a contracting agency that is subject to this section is a pension derived from the contributions of the employer sufficient when added to the service retirement annuity that is derived from the accumulated normal contributions of the state peace officer/firefighter member at the date of his or her retirement to equal the fraction of one-fiftieth of his or her final compensation set forth opposite his or her age at retirement taken to the preceding completed quarter year, in the following table, multiplied by the number of years of state peace officer/firefighter service subject to this section with which he or she is credited at retirement.

Age at Retirement	Fraction
50	1.0000
50 1/4	1.0125
50 1/2	1.0250
50 3/4	1.0375
51	1.0500
51 1/4	1.0625
51 1/2	1.0750
51 3/4	1.0875
52	1.1000

52 1/4	1.1125
52 1/2	1.1250
52 3/4	1.1375
53	1.1500
53 1/4	1.1625
53 1/2	1.1750
53 3/4	1.1875
54	1.2000
54 1/4	1.2125
54 1/2	1.2250
54 3/4	1.2375
55 and over	1.2500

(b) In no event shall the current service pension and the combined current and prior service pensions under this section for all service to all employers exceed an amount that, when added to the service retirement annuity related to that service, equals 75 percent of final compensation. For state members who retire on or after January 1, 1995, and with respect to service for all state employers under this section except as provided in Sections 21363.5 and 21363.6, the benefit shall not exceed 80 percent of final compensation. For local members who retire on or after January 1, 2000, the benefit shall not exceed 85 percent of final compensation. If the pension relates to service to more than one employer, or this section and Section 21369, and would otherwise exceed that maximum, the pension payable with respect to each section or employer shall be reduced in the same proportion as the allowance bears to the total allowance computed as though there were no limit, so that the total of the pensions shall equal the maximum. Where a state or local member retiring on or after January 1, 1995, has service under this section with both state and local agency employers including, but not limited to, service subject to Section 21363.5 or 21363.6, the higher maximum shall apply and the additional benefit, if any, shall be funded by increasing the member's pension payable with respect to the employer for whom the member performed the service subject to the higher maximum.

(c) The Legislature reserves, with respect to any member subject to this section, the right to provide for the adjustment of industrial disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate because of the earlier age of service retirement made possible by the benefits under this section.

(d) This section may be applied to related supervisory classes or confidential positions for the respective bargaining units specified in this section.

(e) (1) This section shall be operative with respect to state peace officer/firefighter members in Corrections Bargaining Unit No. 6, Protective Services and Public Safety Bargaining Unit No. 7, or Firefighters Bargaining Unit No. 8, in accordance with a memorandum of understanding reached between the state and the exclusive bargaining agent in the respective unit pursuant to Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1.

(2) This section also shall be operative with respect to the state peace officer/firefighter members employed by a California State University police department who are in Public Safety Unit No. 8 in accordance with a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

(3) This section shall also be operative with respect to a "state peace officer/firefighter member" defined in subdivision (a) of Section 20396 if authorized by, and in accordance with, a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

(4) Nothing in this section or in any other provision of law affected by Chapter 1320 of the Statutes of 1984 or Chapter 234 of the Statutes of 1986 shall be construed as authorizing any future negotiation with respect to whether or not any bargaining unit specified in this section whose memorandum of understanding was previously approved by the Legislature pursuant to law and this section, shall continue to remain within the state peace officer/firefighter membership category.

(5) The operative date of this section with respect to members in each of the bargaining units specified in this section shall be as provided for in the memorandum of understanding.

(6) This section shall not apply to a person whose effective date of retirement is prior to the operative date of this section with respect to the bargaining unit of the person.

(f) This section shall be known as, and may be cited as the State Peace Officers' and Fire Fighters' Retirement Act.

(g) The Legislature reserves the right to subsequently modify or amend this part in order to completely effectuate the intent and purposes of this section and the right to not provide any new comparable advantages if disadvantages to employees result from any modification or amendment.

(h) This section shall not apply to a contracting agency nor its employees until, first, it is agreed to in a written memorandum of understanding entered into by an employer and representatives of employees and, second, the contracting agency elects to be subject to it by amendment to its contract made in the manner prescribed

for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local safety member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section. However, this section shall not apply to any local safety member in the employ of an employer not subject to this section on January 1, 2000.

SEC. 9.6. Section 21363 of the Government Code is amended to read:

21363. (a) The combined current and prior service pensions for state peace officer/firefighter members subject to this section with respect to state peace officer/firefighter service and the combined current and prior service pensions for local safety members with respect to local safety service rendered to a contracting agency that is subject to this section is a pension derived from the contributions of the employer sufficient when added to the service retirement annuity that is derived from the accumulated normal contributions of the state peace officer/firefighter member at the date of his or her retirement to equal the fraction of one-fiftieth of his or her final compensation set forth opposite his or her age at retirement taken to the preceding completed quarter year, in the following table, multiplied by the number of years of state peace officer/firefighter service subject to this section with which he or she is credited at retirement.

Age at Retirement	Fraction
50	1.0000
50 1/4	1.0125
50 1/2	1.0250
50 3/4	1.0375
51	1.0500
51 1/4	1.0625
51 1/2	1.0750
51 3/4	1.0875
52	1.1000
52 1/4	1.1125
52 1/2	1.1250
52 3/4	1.1375
53	1.1500
53 1/4	1.1625
53 1/2	1.1750
53 3/4	1.1875
54	1.2000

54 1/4	1.2125
54 1/2	1.2250
54 3/4	1.2375
55 and over	1.2500

(b) In no event shall the current service pension and the combined current and prior service pensions under this section for all service to all employers exceed an amount that, when added to the service retirement annuity related to that service, equals 75 percent of final compensation. For state members who retire on or after January 1, 1995, and with respect to service for all state employers under this section except as provided in Sections 21363.5 and 21363.6, the benefit shall not exceed 80 percent of final compensation. For local members who retire on or after January 1, 2000, the benefit shall not exceed 85 percent of final compensation. If the pension relates to service to more than one employer, or this section and Section 21369, and would otherwise exceed that maximum, the pension payable with respect to each section or employer shall be reduced in the same proportion as the allowance bears to the total allowance computed as though there were no limit, so that the total of the pensions shall equal the maximum. Where a state or local member retiring on or after January 1, 1995, has service under this section with both state and local agency employers including, but not limited to, service subject to Section 21363.5 or 21363.6, the higher maximum shall apply and the additional benefit, if any, shall be funded by increasing the member's pension payable with respect to the employer for whom the member performed the service subject to the higher maximum.

(c) The Legislature reserves, with respect to any member subject to this section, the right to provide for the adjustment of industrial disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate because of the earlier age of service retirement made possible by the benefits under this section.

(d) This section may be applied to related supervisory classes or confidential positions for the respective bargaining units specified in this section.

(e) (1) This section shall be operative with respect to state peace officer/firefighter members in Corrections Bargaining Unit No. 6, Protective Services and Public Safety Bargaining Unit No. 7, or Firefighters Bargaining Unit No. 8, in accordance with a memorandum of understanding reached between the state and the exclusive bargaining agent in the respective unit pursuant to Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1.

(2) This section also shall be operative with respect to the state peace officer/firefighter members employed by a California State University police department who are in Public Safety Unit No. 8 in accordance with a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

(3) This section shall also be operative with respect to a "state peace officer/firefighter member" defined in subdivision (a) of Section 20396 if authorized by, and in accordance with, a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1.

(4) Nothing in this section or in any other provision of law affected by Chapter 1320 of the Statutes of 1984 or Chapter 234 of the Statutes of 1986 shall be construed as authorizing any future negotiation with respect to whether or not any bargaining unit specified in this section whose memorandum of understanding was previously approved by the Legislature pursuant to law and this section, shall continue to remain within the state peace officer/firefighter membership category.

(5) The operative date of this section with respect to members in each of the bargaining units specified in this section shall be as provided for in the memorandum of understanding.

(6) With the exception of state peace officer/firefighter members for service rendered for the Legislature or judicial branch of government, this section shall apply to state peace officer/firefighter members who are not employed by the state on or after January 1, 2000.

(f) This section shall be known as, and may be cited as the State Peace Officers' and Fire Fighters' Retirement Act.

(g) The Legislature reserves the right to subsequently modify or amend this part in order to completely effectuate the intent and purposes of this section and the right to not provide any new comparable advantages if disadvantages to employees result from any modification or amendment.

(h) This section shall not apply to a contracting agency nor its employees until, first, it is agreed to in a written memorandum of understanding entered into by an employer and representatives of employees and, second, the contracting agency elects to be subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local safety member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section. However, this section shall not apply to any local safety

member in the employ of an employer not subject to this section on January 1, 2000.

SEC. 10. Section 21370 of the Government Code is amended to read:

21370. (a) The combined prior and current service pension for local safety members with respect to service to a contracting agency subject to this section, upon retirement after attaining 56 years of age, is a pension derived from contributions of an employer sufficient, when added to that portion of the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of his or her retirement, to equal one-fiftieth of his or her final compensation set forth opposite his or her age at retirement taken to the preceding completed quarter year in the following table, multiplied by the number of years of service credited to him or her as a local safety member subject to this section at retirement.

(b) Upon retirement for service prior to attaining 56 years of age, the percentage of final compensation payable for each year of credited service that is subject to this section shall be the product of 2 percent multiplied by the factor set forth in the following table for the actual age at retirement:

If retirement occurs at age:	The percent for each year of credited service is:
50	.8565
50 1/4	.8650
50 1/2	.8740
50 3/4	.8830
51	.8920
51 1/4	.9020
51 1/2	.9120
51 3/4	.9222
52	.9330
52 1/4	.9410
52 1/2	.9490
52 3/4	.9570
53	.9650
53 1/4	.9675
53 1/2	.9700
53 3/4	.9725
54	.9750
54 1/4	.9810
54 1/2	.9870

54 3/4	.9935
55	1.0000
55 1/4	1.0435
55 1/2	1.0870
55 3/4	1.1310
56	1.1750

(c) This section shall apply only to local police officers and county peace officers who are local safety members.

(d) This section shall not apply to persons whose effective date of retirement is prior to January 1, 1985.

(e) The Legislature reserves, with respect to any member subject to this section, the right to provide for the adjustment of industrial disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate because of the earlier age of service retirement made possible by the benefits under this section.

(f) The percentage of final compensation provided in this section shall be reduced by one-third as applied to that part of the member's final compensation that does not exceed four hundred dollars ($400) per month for service after the effective date of coverage of a member under the federal system. This paragraph shall not apply to a member who retires after the date upon which coverage under the federal system of persons in his or her employment terminates.

(g) In no event shall the total pension for all service under this section exceed an amount that, when added to the service retirement annuity related to the service, equals 75 percent of final compensation. If the pension relates to service for more than one employer and would otherwise exceed the maximum, the pension payable with respect to each employer shall be reduced in the same proportion as the allowance based on service to the employer bears to the total allowance computed as though there were no limit, so that the total of the pensions shall equal the maximum.

(h) This section shall only apply as an optional contributory retirement formula for this system for local safety groups whose group participated in Federal Old Age and Survivors' Insurance provisions of the Social Security Act on April 1983.

(i) This section shall not apply to a contracting agency nor its employees until the agency and the representative employee organization agree by memorandum of understanding to be subject to it by amendment to its contract made in the manner prescribed for approval of contracts. It shall also be required that the representative employee organizations agree to be subject to this provision.

(j) The operative date of this section with respect to a local safety member shall be the effective date of the amendment to the

employer's contract electing to be subject to this section. However, this section shall not apply to any local safety member in the employ of an employer not subject to this section on January 1, 2000.

SEC. 10.5. Section 21370 of the Government Code is amended to read:

21370. (a) The combined prior and current service pension for local safety members with respect to service to a contracting agency subject to this section, upon retirement after attaining 56 years of age, is a pension derived from contributions of an employer sufficient, when added to that portion of the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of his or her retirement, to equal one-fiftieth of his or her final compensation set forth opposite his or her age at retirement taken to the preceding completed quarter year in the following table, multiplied by the number of years of service credited to him or her as a local safety member subject to this section at retirement.

(b) Upon retirement for service prior to attaining 56 years of age, the percentage of final compensation payable for each year of credited service that is subject to this section shall be the product of 2 percent multiplied by the factor set forth in the following table for the actual age at retirement:

If retirement occurs at age:	The percent for each year of credited service is:
50	.8565
50 1/4	.8650
50 1/2	.8740
50 3/4	.8830
51	.8920
51 1/4	.9020
51 1/2	.9120
51 3/4	.9222
52	.9330
52 1/4	.9410
52 1/2	.9490
52 3/4	.9570
53	.9650
53 1/4	.9675
53 1/2	.9700
53 3/4	.9725
54	.9750
54 1/4	.9810

54 1/2	.9870
54 3/4	.9935
55	1.0000
55 1/4	1.0435
55 1/2	1.0870
55 3/4	1.1310
56	1.1750

(c) This section shall apply only to local police officers and county peace officers who are local safety members.

(d) This section shall not apply to persons whose effective date of retirement is prior to January 1, 1985.

(e) The Legislature reserves, with respect to any member subject to this section, the right to provide for the adjustment of industrial disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate because of the earlier age of service retirement made possible by the benefits under this section.

(f) The percentage of final compensation provided in this section shall be reduced by one-third as applied to that part of the member's final compensation that does not exceed four hundred dollars ($400) per month for service after the effective date of coverage of a member under the federal system. This paragraph shall not apply to a member who retires after the date upon which coverage under the federal system of persons in his or her employment terminates.

(g) For members who retire prior to January 1, 2000, in no event shall the total pension for all service under this section exceed an amount that, when added to the service retirement annuity related to the service, equals 75 percent of final compensation. For members who retire on or after January 1, 2000, the allowance shall not exceed 85 percent of final compensation. If the pension relates to service for more than one employer and would otherwise exceed the maximum, the pension payable with respect to each employer shall be reduced in the same proportion as the allowance based on service to the employer bears to the total allowance computed as though there were no limit, so that the total of the pensions shall equal the maximum.

(h) This section shall only apply as an optional contributory retirement formula for this system local safety groups whose group participated in Federal Old Age and Survivors' Insurance provisions of the Social Security Act on April 1983.

(i) This section shall not apply to a contracting agency nor its employees until the agency and the representative employee organization agree by memorandum of understanding to be subject to it by amendment to its contract made in the manner prescribed for approval of contracts. It shall also be required that the

representative employee organizations agree to be subject to this provision.

(j) The operative date of this section with respect to a local safety member shall be the effective date of the amendment to the employer's contract electing to be subject to this section. However, this section shall not apply to any local safety member in the employ of an employer not subject to this section on January 1, 2000.

SEC. 11. Section 21461 of the Government Code is amended to read:

21461. (a) A member retiring for service may elect to have the actuarial equivalent of his or her unmodified service retirement allowance paid in two parts as follows:

(1) A temporary annuity in an amount specified by the member but which shall not result in a reduction to his or her unmodified allowance by more than 50 percent.

(2) A life income consisting of his or her service retirement annuity plus the pension provided by the actuarial value of his or her current and prior service pensions remaining after providing the temporary annuity in paragraph (1).

(b) The temporary annuity under subdivision (a) shall not be subject to further optional settlement under this article and shall be payable monthly as an addition to the member's monthly life income beginning on his or her effective date of retirement and continuing until the member reaches age $59^1/_2$ or any whole age between ages 60 and 68, as designated by the member at the time of his or her retirement. If his or her death occurs prior to that age, the commuted value of any remaining installments shall be paid to his or her designated beneficiary in a lump sum.

SEC. 12. Section 21465 of the Government Code is amended to read:

21465. Optional settlement 5 consists of a partial distribution of the actuarial present value of the portion, as specified in this section, of the member's unmodified monthly allowance, as prescribed in Section 21363 or 21403. The actuarial present value shall be based upon the investment return and postretirement mortality assumptions adopted by the board for that purpose. The member may elect to receive the actuarial present value of no less than 20 percent and no more than 50 percent of his or her unmodified allowance. The member may elect to receive the remaining portion of the unmodified allowance, not distributed as a lump sum, under one of the settlements specified in this article for the remainder of his or her lifetime and thereafter to his or her designated beneficiary, unless this amount is solely limited to the survivor continuance portion. Under no circumstances shall the portion of the unmodified allowance equivalent to the survivor continuance pursuant to Section 21624 be distributed as, of, the lump sum. Under no circumstances shall the benefits provided under this section exceed

the benefits that would have otherwise been provided under any other section in this article.

This section shall only apply to state peace officer/firefighter members in State Bargaining Unit 6 who retire on and after January 1, 1999, as well as to state peace officer/firefighter members in related supervisory and confidential positions, provided the Department of Personnel Administration has approved their inclusion.

SEC. 13. Section 21497 of the Government Code is amended to read:

21497. If the total value of the benefit to be paid pursuant to Section 21493, 21494, or 21506 is less than an amount determined by the board, the benefit may be paid to the first member of the entitled class of beneficiaries who files a claim. If the total value of the benefit pursuant to any of these sections exceeds the amount established by the board but the number of qualifying beneficiaries under these sections is such that any individual benefit will be less than the amount established by the board, the board shall limit the number of beneficiaries so that no individual's benefit will be less than the amount established by the board. The board shall determine the recipients on the basis of the order in which claims are made.

SEC. 14. Section 21507 of the Government Code is amended to read:

21507. Any lump-sum benefit, or any uncashed lump-sum death benefit warrant, payable by this system to a beneficiary shall be paid to the estate of the beneficiary if he or she dies prior to payment of the benefit. The benefit may be paid to a representative of the deceased beneficiary's estate, upon demonstration by court documents that the person is authorized to act in that capacity. If the estate does not require probate, and the deceased person was the trustor of a trust, benefits may, in the judgment of the board, be paid to the trustee as named in the trust. If the estate is not probated, and the beneficiary was not the trustor of a trust, benefits shall be paid to the beneficiary's surviving next of kin, in the order specified in Section 21493.

SEC. 15. Section 21751 of the Government Code is amended to read:

21751. The definitions in Part 3 (commencing with Section 20000) shall apply to this part. The following definition shall also govern the interpretation of this part:

"Participating agency" means any public agency that meets the criteria for becoming a contracting agency in this system pursuant to Chapter 5 (commencing with Section 20460) of Part 3, but that has not elected to participate in this system as a contracting agency, and that elects to contract with the board to participate in the replacement benefit program administered pursuant to this part by the board.

SEC. 16. Section 22013.77 is added to the Government Code, to read:

22013.77. "Policeman," as used in this part, also includes persons designated as peace officers by subdivision (e) of Section 20391 for the purposes of Section 218(d)(5)(A) of Title 42 of the United States Code.

SEC. 17. Section 22774 of the Government Code is amended to read:

22774. The board shall, in accordance with this part, approve health benefits plans and may contract with carriers offering health benefits plans.

Irrespective of the provisions of Sections 1090 and 1091 of this code, the board member who is an officer of a life insurer may participate in all board activities in administering the provisions of this part, except that he or she shall not vote on the question of whether a contract should be entered into or approval should be given concerning any plan in which the board member has a financial interest, as defined in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

SEC. 18. Section 22970.2 of the Government Code, as added by Senate Bill 522 of the 1999–2000 Regular Session, is amended to read:

22970.2. 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.

SEC. 19. Section 75101 of the Government Code is amended to read:

75101. The Controller shall at the end of each month ascertain the aggregate amount of the annual salaries of judges covered by the system, and out of the General Fund he or she shall transfer monthly into the Judges' Retirement Fund a sum equal to 8 percent of one-twelfth of the aggregate amount of those salaries.

SEC. 20. Section 75520 of the Government Code is amended to read:

75520. (a) A judge shall, monthly, accrue monetary credits equal to 18 percent of the judge's monthly salary.

(b) To the total monetary credits in each judge's account, an additional amount shall be credited monthly at a rate, not less than zero, equal to the annual net earnings rate achieved by the Judges' Retirement System II Fund on its investments of moneys in the Judges' Retirement System II Fund during the preceding fiscal year.

SEC. 21. Section 75521 of the Government Code is amended to read:

75521. (a) A judge who leaves judicial office before accruing at least five years of service shall be paid the amount of his or her contributions to the system, and no other amount.

(b) A judge who leaves judicial office after accruing five or more years of service and who is not eligible to elect to retire under Section 75522 shall be paid the amount of his or her monetary credits determined pursuant to Section 75520, including the credits added

under subdivision (b) of that section computed to the last day of the month preceding the date of distribution, and no other amount.

(c) Judges who leave office as described in subdivision (b) are "retired judges" for purposes of assignment pursuant to Article 2 (commencing with Section 66540) of Chapter 2 of this division and are eligible for benefits provided under Section 22816.31.

(d) After a judge has withdrawn his or her accumulated contributions or the amount of his or her monetary credits upon leaving judicial office, the service shall not count in the event he or she later becomes a judge again, until he or she pays into the Judges' Retirement System II Fund the amount withdrawn, plus interest thereon at the rate of interest then being required to be paid by members of the Public Employees' Retirement System under Section 20750 from the date of withdrawal to the date of payment.

SEC. 22. Section 75523 of the Government Code is amended to read:

75523. (a) The retirement allowance of retired judges who have elected to receive a monthly allowance under subdivision (d) of Section 75522 or who have retired for disability and are receiving an allowance under Section 75560.4 shall be adjusted effective in January of each year after a judge has been retired under this chapter for more than six months, to reflect any increase in the cost of living occurring after January 1 of the immediately preceding fiscal year. The United States city average of the "Consumer Price Index for all Urban Consumers," as published by the United States Bureau of Statistics, shall be used as the basis for determining changes in the cost of living.

(b) No adjustment shall be made unless the cost-of-living increase equals or exceeds 1 percent. The allowance shall not be increased more than 3 percent in a single year. Increases shall be compounded.

(c) The allowance shall not be decreased as a result of the cost-of-living adjustment.

(d) The board shall provide, by rule, any details needed for the implementation of this section.

SEC. 23. Section 6 of this bill shall not become operative if either Senate Bill 399 or Senate Bill 400 of the 1999–2000 Regular Session is enacted and becomes operative.

SEC. 24. Section 2.5 of this bill incorporates amendments to Section 20391 of the Government Code proposed by both this bill and SB 400. 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 20391 of the Government Code, and (3) this bill is enacted after SB 400, in which case Section 2 of this bill shall not become operative.

SEC. 25. (a) Section 9.2 of this bill incorporates amendments to Section 21363 of the Government Code proposed by both this bill and SB 400. 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 21363 of the Government Code, (3) SB 800 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 400, in which case Sections 9, 9.4, and 9.6 of this bill shall not become operative.

(b) Section 9.4 of this bill incorporates amendments to Section 21363 of the Government Code proposed by both this bill and SB 800. 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 21363 of the Government Code, (3) SB 400 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 800, in which case Sections 9, 9.2, and 9.6 of this bill shall not become operative.

(c) Section 9.6 of this bill incorporates amendments to Section 21363 of the Government Code proposed by this bill, SB 400, and SB 800. 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 21363 of the Government Code, and (3) this bill is enacted after SB 400, and SB 800, in which case Sections 9, 9.2, and 9.4 of this bill shall not become operative.

SEC. 26. Section 10.5 of this bill incorporates amendments to Section 21370 of the Government Code proposed by both this bill and SB 800. 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 21370 of the Government Code, and (3) this bill is enacted after SB 800, in which case Section 10 of this bill shall not become operative.

SEC. 27. Section 18 of this bill shall become operative only if Senate Bill 522 of the 1999–2000 Regular Session is enacted and becomes operative on or before January 1, 2000 and, as enacted, adds Section 22970.2 to the Government Code.

CHAPTER 786

An act to amend Sections 25658, 25658.1, and 25658.4 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 25658 of the Business and Professions Code is amended to read:

25658. (a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing an alcoholic beverage for a person under the age of 21 years and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

(d) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(e) (1) Except as otherwise provided in paragraph (2) or (3), any person who violates this section shall be punished by a fine of two hundred fifty dollars ($250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court.

(2) Any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars ($1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine not exceeding one thousand dollars ($1,000), or by both imprisonment and fine.

(f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, who sell alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action

against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed premises addressed to the licensee, or by mailing a notice addressed to the licensee.

SEC. 2. Section 25658.1 of the Business and Professions Code is amended to read:

25658.1. (a) Notwithstanding any other provision of this division, no licensee may petition the department for an offer in compromise pursuant to Section 23095 for a second or any subsequent violation of Section 25658 that occurs within 36 months of the initial violation.

(b) Notwithstanding Section 24200, the department may revoke a license for a third violation of Section 25658 that occurs within any 36-month period. This provision shall not be construed to limit the department's authority and discretion to revoke a license prior to a third violation when the circumstances warrant that penalty.

(c) For purposes of this section, no violation may be considered for purposes of determination of the penalty until it has become final.

SEC. 3. Section 25658.4 of the Business and Professions Code is amended to read:

25658.4. (a) On and after January 1, 1992, no clerk shall make an off sale of alcoholic beverages unless the clerk executes under penalty of perjury on the first day he or she makes that sale an application and acknowledgment. The application and acknowledgment shall be in a form understandable to the clerk.

(1) The department shall specify the form of the application and acknowledgment which shall include at a minimum a summary of this division pertaining to the following:

(A) The prohibitions contained in Sections 25658 and 25658.5 pertaining to the sale to, and purchase of, alcoholic beverages by persons under 21 years of age.

(B) Bona fide evidence of majority as provided in Section 25660.

(C) Hours of operation as provided in Article 2 (commencing with Section 25630) of Chapter 16.

(D) The prohibitions contained in subdivision (a) of Section 25602 and Section 25602.1 pertaining to sales to an intoxicated person.

(E) Sections 23393 and 23394 as they pertain to on-premises consumption of alcoholic beverages in an off-sale premises.

(F) The requirements and prohibitions contained in Section 25659.5 pertaining to sales of keg beer for consumption off licensed premises.

(2) The application and acknowledgment shall also include a statement that the clerk has read and understands the summary, a

statement that the clerk has never been convicted of violating this division or, if convicted, an explanation of the circumstances of each conviction, and a statement that the application and acknowledgment is executed under penalty of perjury.

(3) The licensee shall keep the executed application and acknowledgment on the premises at all times and available for inspection by the department. A licensee with more than one licensed off-sale premises in the state may comply with this subdivision by maintaining an executed application and acknowledgment at a designated licensed premises, regional office, or headquarters office in the state. An executed application and acknowledgment maintained at the designated locations shall be valid for all licensed off-sale premises owned by the licensee. Any licensee maintaining an application and acknowledgment at a designated site other than the individual licensed off-sale premises shall notify the department in advance and in writing of the site where the application and acknowledgment shall be maintained and available for inspection. A licensee electing to maintain application and acknowledgments at a designated site other than the licensed premises shall maintain at each licensed premises a notice of where the executed application and acknowledgments are located. Any licensee with more than one licensed off-sale premises who elects to maintain the application and acknowledgments at a designated site other than each licensed premises shall provide the department, upon written demand, a copy of any employee's executed application and acknowledgment within 10 business days. A violation of this subdivision by a licensee constitutes grounds for discipline by the department.

(b) On and after January 1, 1992, the licensee shall post a notice that contains and describes, in concise terms, prohibited sales of alcoholic beverages, a statement that the off-sale seller will refuse to make a sale if the seller reasonably suspects that the Alcoholic Beverage Control Act may be violated, and a statement that a minor who purchases or attempts to purchase alcoholic beverages is subject to suspension or delay in the issuance of his or her driver's license pursuant to Section 13202.5 of the Vehicle Code. The notice shall be posted at an entrance or at a point of sale in the licensed premises or in any other location that is visible to purchasers of alcoholic beverages and to the off-sale seller.

(c) On and after January 1, 1998, a retail licensee shall post a notice that contains and describes, in concise terms, the fines and penalties for any violation of Section 25658, relating to the sale of alcoholic beverages to, or the purchase of alcoholic beverages by, any person under the age of 21 years.

(d) Nonprofit organizations or licensees may obtain videotapes and other training materials from the department on the Licensee Education on Alcohol and Drugs (LEAD) program. The videotapes and training materials may be updated periodically and may be

provided in English and other languages, and when made available by the department, shall be provided at cost.

(e) As used in this section:

(1) "Off-sale seller" means any person holding a retail off-sale license issued by the department and any person employed by that licensee who in the course of that employment sells alcoholic beverages.

(2) "Clerk" means an off-sale seller who is not a licensee.

(f) The department may adopt rules and appropriate fees for licensees that it determines necessary for the administration of this section.

CHAPTER 787

An act to amend Sections 25354, 25612.5, 25658, 25658.5, 25661, and 25662 of the Business and Professions Code, and to amend Section 11474 of the Health and Safety Code, relating to alcoholic beverage control.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 25354 of the Business and Professions Code is amended to read:

25354. Alcoholic beverages manufactured or produced in this state by any person other than a licensed manufacturer or winegrower, when seized for forfeiture under this division, may be disposed of by the department, its officers, or employees by summary destruction. Controlled substances, instruments, or paraphernalia seized by the department may only be disposed of pursuant to a court order for destruction.

SEC. 2. Section 25612.5 of the Business and Professions Code is amended to read:

25612.5. (a) This section shall apply to licensees other than a retail on-sale licensee or on-sale beer and wine licensee who is licensed and operates as a bona fide public eating place, as defined in Section 23038, 23038.1, or 23038.2, or as a hotel, motel, or similar lodging establishment, as defined in subdivision (b) of Section 25503.16; a winegrowers license; a licensed beer manufacturer, as defined in Section 23357; a retail licensee who concurrently holds an off-sale retail beer and wine license and a beer manufacturer's license for those same or contiguous premises; and a retail on-sale licensee or on-sale beer and wine licensee who is licensed and operates as a bona fide public eating place, as defined in Section 23038, 23038.1, or 23038.2, or as a hotel, motel, or similar lodging establishment, as

defined in subdivision (b) of Section 25503.16, a licensed beer manufacturer, as defined in Section 23357, or a winegrowers license, who sells off-sale beer and wine under the on-sale license on those same or contiguous premises.

(b) The Legislature finds and declares that it is in the interest of the public health, safety, and welfare to adopt operating standards as set forth in this section for specified retail premises licensed by the department. The standards set forth in this section are state standards that do not preclude the adoption and implementation of more stringent local regulations that are otherwise authorized by law.

(c) Other than as provided in subdivision (a), each retail licensee shall comply with all of the following:

(1) A prominent, permanent sign or signs stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee. The size, format, form, placement, and languages of the sign or signs shall be determined by the department. This paragraph shall apply to a licensee only upon written notice to the licensee from the department. The department shall issue this written notice only upon a request, from the local law enforcement agency in whose jurisdiction the premises are located, that is supported by substantial evidence that there is loitering adjacent to the premises.

(2) A prominent, permanent sign or signs stating "NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE ALLOWED ON THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee. The size, format, form, placement, and languages of the sign or signs shall be determined by the department. This paragraph shall apply to a licensee only upon written notice to the licensee from the department. The department shall issue this written notice only upon a request, from the local law enforcement agency in whose jurisdiction the premises are located, that is supported by substantial evidence that there is drinking in public adjacent to the premises.

(3) No alcoholic beverages shall be consumed on the premises of an off-sale retail establishment, and no alcoholic beverages shall be consumed outside the edifice of an on-sale retail establishment.

(4) The exterior of the premises, including adjacent public sidewalks and all parking lots under the control of the licensee, shall be illuminated during all hours of darkness during which the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. However, the required illumination shall be placed so as to minimize interference with the quiet enjoyment of nearby residents of their property.

(5) Litter shall be removed daily from the premises, including adjacent public sidewalks and all parking lots under the control of the

licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis to control debris.

(6) Graffiti shall be removed from the premises and all parking lots under the control of the licensee within 72 hours of application. If the graffiti occurs on a Friday or weekend day, or on a holiday, the licensee shall remove the graffiti 72 hours following the beginning of the next weekday.

(7) No more than 33 percent of the square footage of the windows and clear doors of an off-sale premises shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement shall not apply to premises where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises to a person standing outside the premises.

(8) Upon request of the local law enforcement agency in whose jurisdiction the licensed premises are located or at the discretion of the department, each public telephone located on off-sale premises (or located in an adjacent area under the control of the off-sale licensee) shall be equipped with devices or mechanisms that prevent persons from calling into that public telephone.

(9) Every licensed retailer who sells or rents video recordings of harmful matter, as defined by Section 313 of the Penal Code, shall create an area within his or her business establishment for the placement of video recordings of harmful matter and for any material that advertises the sale or rental of these video recordings. This area shall be labeled "adults only." The licensed retailer shall make reasonable efforts to arrange the video recordings in this area in such a way that minors may not readily access the video recordings or view the video box covers. The failure to create and label the "adults only" area is an infraction punishable by a fine of not more than one hundred dollars ($100). The failure to place a video recording or advertisement, regardless of its content, in this area shall not constitute an infraction.

(10) A copy of the applicable operating standards shall be available during normal business hours for viewing by the general public.

SEC. 3. Section 25658 of the Business and Professions Code is amended to read:

25658. (a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who

consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing an alcoholic beverage for a person under the age of 21 years and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

(d) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(e) (1) Except as otherwise provided in paragraph (2) or (3), any person who violates this section shall be punished by a fine of two hundred fifty dollars ($250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court. A second or subsequent violation of subdivision (b) shall be punished by a fine of not more than five hundred dollars ($500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

(2) Any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars ($1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine not exceeding one thousand dollars ($1,000), or by both imprisonment and fine.

(f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, who sell alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the

Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed premises addressed to the licensee, or by mailing a notice addressed to the licensee.

SEC. 4. Section 25658.5 of the Business and Professions Code is amended to read:

25658.5. Any person under the age of 21 years who attempts to purchase any alcoholic beverage from a licensee, or the licensee's agent or employee, is guilty of an infraction and shall be punished by a fine of not more than one hundred dollars ($100), or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service as determined by the court. A second or subsequent violation of this section shall be punished by a fine of not more than two hundred fifty dollars ($250), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service, as the court deems just. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

SEC. 5. Section 25661 of the Business and Professions Code is amended to read:

25661. Any person under the age of 21 years who presents or offers to any licensee, his or her agent or employee, any written, printed, or photostatic evidence of age and identity which is false, fraudulent or not actually his or her own for the purpose of ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure, the serving of any alcoholic beverage, or who has in his or her possession any false or fraudulent written, printed, or photostatic evidence of age and identity, is guilty of a

misdemeanor and shall be punished by a fine of at least two hundred fifty dollars ($250), no part of which shall be suspended; or the person shall be required to perform not less than 24 hours nor more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court. A second or subsequent violation of this section shall be punished by a fine of not more than five hundred dollars ($500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service, as the court deems just. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

SEC. 6. Section 25662 of the Business and Professions Code is amended to read:

25662. (a) Any person under the age of 21 years who has any alcoholic beverage in his or her possession on any street or highway or in any public place or in any place open to the public is guilty of a misdemeanor and shall be punished by a fine of two hundred fifty dollars ($250) or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed or is not attending school. A second or subsequent violation shall be punishable as a misdemeanor and the person shall be fined not more than five hundred dollars ($500), or required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service as the court deems just. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides. This section does not apply to possession by a person under the age of 21 years making a delivery of an alcoholic beverage in pursuance of the order of his or her parent, responsible adult relative, or any other adult designated by the parent or legal guardian, or in pursuance of his or her employment. That person shall have a complete defense if he or she was following, in a timely manner, the reasonable instructions of his or her parent, legal guardian, responsible adult relative, or adult designee relating to disposition of the alcoholic beverage.

(b) Unless otherwise provided by law, where a peace officer has lawfully entered the premises, the peace officer may seize any alcoholic beverage in plain view that is in the possession of, or provided to, a person under the age of 21 years at social gatherings, when those gatherings are open to the public, 10 or more persons

under the age of 21 years are participating, persons under the age of 21 years are consuming alcoholic beverages, and there is no supervision of the social gathering by a parent or guardian of one or more of the participants.

Where a peace officer has seized alcoholic beverages pursuant to this subdivision, the officer may destroy any alcoholic beverage contained in an opened container and in the possession of, or provided to, a person under the age of 21 years, and, with respect to alcoholic beverages in unopened containers, the officer shall impound those beverages for a period not to exceed seven working days pending a request for the release of those beverages by a person 21 years of age or older who is the lawful owner or resident of the property upon which the alcoholic beverages were seized. If no one requests release of the seized alcoholic beverages within that period, those beverages may be destroyed.

SEC. 7. Section 11474 of the Health and Safety Code is amended to read:

11474. A court order for the destruction of controlled substances, instruments, or paraphernalia pursuant to the provisions of Section 11473 or 11473.5 may be carried out by a police or sheriff's department, the Department of Justice, the Department of the California Highway Patrol, or the Department of Alcoholic Beverage Control. The court order shall specify the agency responsible for the destruction. Controlled substances, instruments, or paraphernalia not in the possession of the designated agency at the time the order of the court is issued shall be delivered to the designated agency for destruction in compliance with the order.

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 788

An act to add Division 22.8 (commencing with Section 32600) to the Public Resources Code, relating to the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Division 22.8 (commencing with Section 32600) is added to the Public Resources Code, to read:

DIVISION 22.8. SAN GABRIEL AND LOWER LOS ANGELES RIVERS AND MOUNTAINS CONSERVANCY

CHAPTER 1. GENERAL PROVISIONS

32600. This division shall be known, and may be cited, as the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy Act.

32601. The Legislature hereby finds and declares that the San Gabriel River and its tributaries, the Lower Los Angeles River and its tributaries, and the San Gabriel Mountains, Puente Hills, and San Jose Hills constitute a unique and important open-space, environmental, anthropological, cultural, scientific, educational, recreational, scenic, and wildlife resource that should be held in trust to be preserved and enhanced for the enjoyment of, and appreciation by, present and future generations.

32602. There is in the Resources Agency, the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy, which is created as a state agency for the following purposes:

(a) To acquire and manage public lands within the Lower Los Angeles River and San Gabriel River watersheds, and to provide open-space, low-impact recreational and educational uses, water conservation, watershed improvement, wildlife and habitat restoration and protection, and watershed improvement within the territory.

(b) To preserve the San Gabriel River and the Lower Los Angeles River consistent with existing and adopted river and flood control projects for the protection of life and property.

(c) To acquire open-space lands within the territory of the conservancy.

(d) To provide for the public's enjoyment and enhancement of recreational and educational experiences on public lands in the San Gabriel Watershed and Lower Los Angeles River, and the San Gabriel Mountains in a manner consistent with the protection of lands and resources in those watersheds.

CHAPTER 2. DEFINITIONS

32603. As used in this division, the following terms have the following meaning:

(a) "Board" means the governing board of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy.

(b) "Conservancy" means the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy.

(c) "Territory" means the territory of the conservancy that consists of those portions of Los Angeles County and Orange County located within the San Gabriel River and its tributaries, the Los Angeles River and its tributaries, and the San Gabriel Mountains, including, without limitation, all of the following:

(1) The hydrologic basin or watershed that coincides with the upper San Gabriel River watershed, including the Upper Rio Hondo tributary, but not including any land area within the Santa Monica Mountains Conservancy as described in Chapter 2 (commencing with Section 33100) and Chapter 3 (commencing with Section 33200) of Division 23. The hydrologic basin or watershed is bounded by the San Gabriel Mountains to the north, the San Jose Hills to the east, the Puente Hills to the south, and by a series of hills and the Raymond Fault to the west.

(2) The hydrologic basin or watershed that coincides with the lower San Gabriel River watershed.

(3) The San Gabriel Mountains, including the Foothills Mountains Conservancy and the Puente Hills and San Jose Hills area, except any land area within the Santa Monica Mountains Conservancy as described in Chapter 2 (commencing with Section 33100) and Chapter 3 (commencing with Section 33200) of Division 23.

(4) The hydrologic basin or watershed that coincides with the Los Angeles River south of the northernmost boundary of the City of Vernon, as of June 1, 1999, except any land area within the Santa Monica Mountains Conservancy, as described in Chapter 2 (commencing with Section 33100) and Chapter 3 (commencing with Section 33200) of Division 23.

CHAPTER 5. LIMITATIONS

32620. Nothing in this division shall be interpreted to grant the board any regulatory or governing authority over any ordinance or regulatory measure adopted by a city, county, or special district that pertains to land use, water rights, or environmental quality.

32621. (a) Notwithstanding any other provision of this division, the conservancy shall not take any action that does any of the following:

(1) Interferes or conflicts with the exercise of the powers or duties of any watermaster, public agency, or other body or entity responsible for groundwater or surface water management or groundwater replenishment as designated or established pursuant to any adjudication or statute.

(2) Interferes or conflicts with any provision of any judgment or court order issued, or rule or regulation adopted, pursuant to any adjudication affecting water or water management in the San Gabriel River watershed and basin.

(3) Impedes or adversely impacts any previously adopted Los Angeles County Drainage Area project, as described in the report of the Chief of Engineers dated June 30, 1992, including any supplement or addendum to that report as of September 1, 1999, or any maintenance agreement to operate the project.

(4) Results in the degradation of water quality, or interferes or conflicts with any action by a watermaster or public agency that is authorized pursuant to statute, any water right or adjudication including, but not limited to, any action relating to water conservation, groundwater recharge, conservation or storage of water, or both, the pumping of groundwater, water treatment, the regulation of spreading, injection, pumping, storage, or the use of water from local sources, stormwater flows and runoff, or from imported or reclaimed water that is undertaken in connection with the management of the San Gabriel River or any branch, stream, fork, or tributary thereof, a groundwater basin, or groundwater resource.

(5) Interferes with, obstructs, hinders, or delays the exercise of, any water right by the owner of a public water system, including, but not limited to, the construction, operation, maintenance, replacement, repair, location, or relocation of any well or water pumping, treatment, or storage facility, pipeline, or other facility or property necessary or useful to the operation of the public water system.

(b) The conservancy shall provide written notice to every water association in the jurisdiction of the conservancy of any proposed action, policy, or project that may affect any water right or water delivery system at least 45 calendar days prior to the date set for approval of any of those matters by the conservancy.

(c) As used in this section, "adjudication" means any final judgment or order entered in any judicial proceeding adjudicating or affecting water rights, surface water management, or groundwater management.

(d) The conservancy shall consult with other conservancies within the Resources Agency prior to implementing any project pursuant to this division in which there may be a jurisdictional overlap between those conservancies. Each of those conservancies shall make its best effort to resolve any issues regarding any project development that is carried out pursuant to this division in a mutually advantageous and environmentally beneficial manner. Any dispute between the conservancies shall be referred to the Resources Agency for resolution.

SEC. 2. This act shall become operative only if Senate Bill 216 of the 1999–2000 Regular Session is enacted and becomes effective on or before January 1, 2000.

SEC. 3. The Legislature recognizes that Chapter 1 (commencing with Section 32600) of Division 22.8 of the Public Resources Code, as added by this bill, is identical to that chapter, as added by Senate Bill

216. It is the intent of the Legislature that Chapter 1 (commencing with Section 32600) as added by both bills be given effect. It is the intent of the Legislature that the provisions of Senate Bill 216 which add Chapter 3 (commencing with Section 32604) and Chapter 4 (commencing with Section 32611) of Division 22.8 of the Public Resources Code be integrated with Chapter 2 (commencing with Section 32603) and Chapter 5 (commencing with Section 32620) of Division 22.8 of the Public Resources Code, as added by this bill, with the result that there be one Division 22.8 (commencing with Section 32600) of the Public Resources Code.

CHAPTER 789

An act to add Division 22.8 (commencing with Section 32600) to the Public Resources Code, relating to the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Division 22.8 (commencing with Section 32600) is added to the Public Resources Code, to read:

DIVISION 22.8. SAN GABRIEL AND LOWER LOS ANGELES RIVERS AND MOUNTAINS CONSERVANCY

CHAPTER 1. GENERAL PROVISIONS

32600. This division shall be known, and may be cited, as the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy Act.

32601. The Legislature hereby finds and declares that the San Gabriel River and its tributaries, the Lower Los Angeles River and its tributaries, and the San Gabriel Mountains, Puente Hills, and San Jose Hills constitute a unique and important open-space, environmental, anthropological, cultural, scientific, educational, recreational, scenic, and wildlife resource that should be held in trust to be preserved and enhanced for the enjoyment of, and appreciation by, present and future generations.

32602. There is in the Resources Agency, the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy, which is created as a state agency for the following purposes:

(a) To acquire and manage public lands within the Lower Los Angeles River and San Gabriel River watersheds, and to provide open-space, low-impact recreational and educational uses, water

conservation, watershed improvement, wildlife and habitat restoration and protection, and watershed improvement within the territory.

(b) To preserve the San Gabriel River and the Lower Los Angeles River consistent with existing and adopted river and flood control projects for the protection of life and property.

(c) To acquire open-space lands within the territory of the conservancy.

(d) To provide for the public's enjoyment and enhancement of recreational and educational experiences on public lands in the San Gabriel Watershed and Lower Los Angeles River, and the San Gabriel Mountains in a manner consistent with the protection of lands and resources in those watersheds.

CHAPTER 3. CONSERVANCY

32604. The conservancy shall do all of the following:

(a) Establish policies and priorities for the conservancy regarding the San Gabriel River and the Lower Los Angeles River, and their watersheds, and conduct any necessary planning activities, in accordance with the purposes set forth in Section 32602.

(b) Give priority to river related projects that create expanded opportunities for recreation, greening, aesthetic improvement, and wildlife habitat along the corridor of the river, and in parts of the river channel that can be improved for the above purposes without infringing on water quality, water supply, and necessary flood control.

(c) Approve conservancy funded projects that advance the policies and priorities set forth in Section 32602.

(d) Prepare a San Gabriel and Lower Los Angeles Parkway and Open Space Plan to be approved by a majority of the cities representing a majority of the population, the Board of Supervisors of Los Angeles County, and by the Central Basin Water Association and the San Gabriel Valley Watermaster. The plan shall include, but not be limited to, all of the following elements:

(1) A determination of the policies and priorities for the conservation of the San Gabriel River and its watershed, the Lower Los Angeles River, and the San Gabriel Mountains, in accordance with the purposes of the conservancy as set forth in Section 32602.

(2) A plan for incorporating, as relevant, the principles and planning work contained within the Los Angeles River Master Plan prepared by the County of Los Angeles.

(3) An identification of underused existing public open spaces and recommendations for providing better public use and enjoyment in areas identified in the plan.

(4) An identification of, and a priority program for implementing, those additional low-impact recreational and open space needs,

including additional or upgraded facilities and parks that may be necessary or desirable.

32605. The board shall consist of 13 voting members and seven nonvoting members, as follows:

(a) The 13 voting members of the board shall consist of all of the following:

(1) One member of the Board of Supervisors of the County of Los Angeles who represents the area or a portion thereof contained within the territory of the conservancy, appointed by the Governor.

(2) Two members of the board of directors of the San Gabriel Valley Council of Governments, one of whom shall be a mayor or city council member of a city bordering along the San Gabriel River, and one of whom shall be a mayor or city council member of a city bordering the San Gabriel Mountains area. One member shall be appointed by a majority of the membership of that board of directors, and one member shall be appointed by the Senate Committee on Rules from a list of potential members submitted by the board of directors.

(3) Two members of the board of directors of the Gateway Cities Council of Governments, one of whom shall be the mayor of the City of Long Beach or a city council member of the City of Long Beach appointed by the mayor, and one of whom shall be appointed by the Speaker of the Assembly from a list of potential members submitted by the executive committee of the board of directors of the Gateway Cities Council of Governments. The executive committee shall submit lists of potential members to the Speaker of the Assembly until an acceptable member is appointed.

(4) Two members of the Orange County Division of the League of California Cities, both of whom shall be a mayor or city council member of a city bordering along the San Gabriel River or a tributary thereof. One member shall be appointed by a majority of the membership of the city selection committee of Orange County, and one member shall be appointed by the Governor from a list of potential members submitted by the city selection committee.

(5) One member shall be a representative of a member of the San Gabriel Water Association appointed by a majority of the membership of the board of directors of the San Gabriel Basin Water Association.

(6) One member shall be a representative of the Central Basin Water Association appointed by a majority of the membership of the board of directors of the Central Basin Water Association.

(7) One member shall be a resident of Los Angeles County appointed by the Governor from a list of potential members submitted by local, state, and national environmental organizations that operate within the County of Los Angeles and within the territory of the conservancy and that have participated in planning for river restoration or open space, or both, or river preservation.

(8) The Secretary of the Resources Agency, or his or her designee.

(9) The Secretary for Environmental Protection, or his or her designee.

(10) The Director of Finance, or his or her designee.

(b) The seven ex officio, nonvoting members shall consist of the following officers or an employee of each agency designated annually by that officer to represent the office or agency:

(1) The District Engineer of the United States Army Corps of Engineers.

(2) The Regional Forester for the Pacific Southwest Region of the United States Forest Service.

(3) The Director of the Los Angeles County Department of Public Works.

(4) The Director of the Orange County Department of Public Works.

(5) A member of the San Gabriel Watermaster, appointed by a majority of the members of the San Gabriel River Watermaster.

(6) The Director of Parks and Recreation.

(7) The executive officer of the Wildlife Conservation Board.

32606. (a) Except as provided in subdivision (c), the term of each voting member of the board shall be two years. Any vacancy shall be filled within 60 days of its occurrence by the appointing authority.

(b) Notwithstanding subdivision (a), no person shall continue as a member of the board if he or she ceases to hold the office that qualifies that person to be appointed as a member of the board, or in the case of the member appointed pursuant to paragraph (5) or (6) of subdivision (a) of Section 32605, ceases to represent a member of the association. The membership on the board held by the person shall terminate immediately upon ceasing to hold that qualifying office or membership. Except as provided in subdivision (c), the position of any member appointed by the Governor shall be deemed vacant immediately if the member ceases to be a resident of the applicable territory.

(c) The term of each of the members appointed pursuant to paragraphs (2) and (3) of subdivision (a) of Section 32605 shall be two years, or until the member's successor is appointed, whichever is longer.

32607. (a) The voting members of the board shall elect a chairperson, vice chairperson, and other officers, as determined to be necessary, from among the board members. The terms of those offices shall be determined by the board.

(b) The conservancy may employ an executive officer and other necessary staff to perform functions that cannot be provided by the existing personnel, by others on a contract basis, or by volunteers, and may enter into contracts for services requiring knowledge, experience, and ability not possessed by the conservancy staff. All those contracts shall be approved by the board.

32608. Members of the board who are not full-time public employees shall be compensated at a rate not to exceed seventy-five dollars ($75) per regular meeting, not to exceed 12 regular meetings per year, and the actual and necessary expenses incurred in the performance of their duties. Any member may waive compensation.

32609. (a) A quorum shall consist of a majority of the voting members of the board. All meetings of the board shall be held in accordance with the Bagley-Keene Open Meetings Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(b) Any action of the board affecting any matter shall be taken by a majority vote of the membership of the board, a quorum being present.

CHAPTER 4. POWERS AND DUTIES

32611. The conservancy may manage, operate, administer, and maintain the lands and facilities it acquires, in accordance with the purposes set forth in Section 32602. The conservancy may adopt regulations governing the use by the public of conservancy lands and facilities and may provide for the enforcement of those regulations.

32612. (a) The conservancy may acquire real property or any interest in real property pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code) within the conservancy's territory from willing sellers and at fair market value, upon a finding that the acquisition is consistent with the purposes of the conservancy, as set forth in Section 32602. The conservancy may acquire the property itself or may coordinate the acquisition through other public agencies that have the authority to acquire property and that have available funding or land to exchange. The conservancy may hold a remainder interest in property in those instances in which an owner desires to sell the property and retain a life estate, and may create and administer a mitigation land bank and arrange land exchanges, consistent with the purposes set forth in Section 32602. The overall objective of the land acquisition program shall be to assist in accomplishing land transactions that are mutually beneficial to the landowner and the conservancy, and that meet the conservancy's purposes. Neither the conservancy nor the State Public Works Board shall exercise the power of eminent domain pursuant to this division.

(b) To the extent not in conflict with any other law, the conservancy may exercise the right of first refusal for surplus public agency property located within its territory for the purposes of the conservancy set forth in Section 32602 subject to the conditions and provisions of the adopted San Gabriel and Lower Los Angeles Parkway and Open Space Plan, and shall conform to all relevant general and specific plans and zoning regulations of local agencies within the territory of the conservancy.

(c) Prior to entering into an agreement to acquire any interest in real property within the territory of the conservancy for open space or conservation purposes, the conservancy shall provide 30 days written notice to the legislative body of the affected local agency, if such a project was not included in the San Gabriel and Lower Los Angeles Parkway and Open Space Plan.

32613. (a) The conservancy shall have, and may exercise, all rights and powers, expressed or implied, necessary to carry out the purposes of this division, except as otherwise provided.

(b) The conservancy may not levy a tax, exercise the power of eminent domain, or regulate land use except on lands it owns, manages or controls. The conservancy shall be subject to all laws, regulations, and general and specific plans of the legislative body of any city in which the conservancy proposes to take action.

32614. The conservancy may do all of the following:

(a) Sue and be sued.

(b) Enter into contracts with any public agency, private entity, or person necessary for the proper discharge of the conservancy's duties, and enter into a joint powers agreement with a public agency, in furtherance of the purposes set forth in Section 32602.

(c) Lease, rent, sell, exchange, or otherwise transfer any real property or interest therein or any option acquired under this division to a local public agency, state agency, federal agency, nonprofit organization, individual, or other entity pursuant to terms and conditions approved by the conservancy pursuant to terms and conditions approved by the conservancy for management purposes, in accordance with the purposes set forth in Section 32602. Prior to entering into an agreement to lease, rent, sell, exchange, or otherwise transfer any real property or interest therein or any option acquired under this division within the territory of the conservancy, the conservancy shall provide 30 days written notice to the legislative body of the affected local agency, if the project was not included in the San Gabriel and Lower Los Angeles Parkway and Open Space Plan.

(d) Initiate, negotiate, and participate in an agreement for the management of land under its ownership or control by a local public agency, state agency, federal agency, nonprofit organization, individual, or other entity, and initiate, negotiate, and participate in an agreement for the management of land under the ownership or control of any of those entities by the conservancy, in accordance with the purposes set forth in Section 32602.

(e) Enter into any other agreement with any public agency, private entity, or person necessary for the proper discharge of the conservancy's duties for the purposes set forth in Section 32602.

(f) Recruit and coordinate volunteers and experts to conduct interpretive and recreational programs and assist with construction projects and the maintenance of parkway facilities.

(g) Undertake, within the territory, site improvement projects, regulate public access, and revegetate and otherwise rehabilitate degraded areas, in consultation with any other public agency with appropriate jurisdiction and expertise, in accordance with the purposes set forth in Section 32602. The conservancy may also, within the territory, upgrade deteriorating facilities and construct new facilities as needed for outdoor recreation, nature appreciation and interpretation, and natural resources projection. The conservancy may undertake those projects by itself or in conjunction with another local agency; however, the conservancy shall provide overall coordination of those projects by setting priorities for the projects and by ensuring a uniform approach to projects. The conservancy may undertake those projects with prior notification to the legislative body of the local agency that has jurisdiction in the area in which the conservancy proposes to undertake that activity.

32614.5. (a) The conservancy may award grants to local public agencies, state agencies, federal agencies, and nonprofit organizations for the purposes of this division.

(b) Grants to nonprofit organizations for the acquisition of real property or interests in real property shall be subject to all of the following conditions:

(1) The purchase price of any interest in land acquired by the nonprofit organization may not exceed fair market value as established by an appraisal approved by the conservancy.

(2) The conservancy approves the terms under which the interest in land is acquired.

(3) The interest in land acquired pursuant to a grant from the conservancy may not be used as security for any debt incurred by the nonprofit organization unless the conservancy approves the transaction.

(4) The transfer of land acquired pursuant to a grant shall be subject to the approval of the conservancy and the execution of an agreement between the conservancy and the transferee sufficient to protect the interests of the state.

(5) The state shall have a right of entry and power of termination in and over all interests in real property acquired with state funds, which may be exercised if any essential term or condition of the grant is violated.

(6) If the existence of the nonprofit organization is terminated for any reason, title to all interest in real property acquired with state funds shall immediately vest in the state, except that, prior to that termination, another public agency or nonprofit organization may receive title to all or a portion of that interest in real property, by recording its acceptance of title, together with the conservancy's approval, in writing.

(c) Any deed or other instrument of conveyance whereby real property is acquired by a nonprofit organization pursuant to this

section shall be recorded and shall set forth the executory interest or right of entry on the part of the state.

32615. The conservancy shall administer any funds appropriated to it, and may expend those funds for capital improvements, land acquisition, or support of the conservancy's operations, in accordance with the purposes set forth in Section 32602. The conservancy may also accept any revenue, money, grants, goods, or services contributed to it by any public agency, private entity, or person and, upon receipt, may use the revenue, money, grants, goods, or services for capital improvements, land acquisitions, or support of the conservancy's operations, in accordance with the purposes set forth in Section 32602.

32616. (a) The conservancy may fix and collect fees for the use of any land owned or controlled, or for any service provided, by the conservancy. No fee shall exceed the cost of maintaining and operating the land or of providing the service for which the fee is charged.

(b) The fee revenue and all other revenue received pursuant to this division shall be deposited in the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy Fund, which is hereby created in the State Treasury. The money in the fund shall be expended by the conservancy, upon appropriation by the Legislature, for the purposes of this division.

SEC. 2. Notwithstanding any other provision of law, the seven hundred thousand dollars ($700,000) appropriated pursuant to Schedule (b) of Item 0540-103-0001 of Section 2.00 of the Budget Act of 1999 shall be available for the support of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy, as established pursuant to this act and Assembly Bill 1355 of the 1999–2000 Regular Session.

SEC. 3. The Legislature recognizes that Chapter 1 (commencing with Section 32600) of Division 22.8 of the Public Resources Code, as added by this bill, is identical to Chapter 1 (commencing with Section 32600), as added by Assembly Bill 1355. It is the intent of the Legislature that Chapter 1 (commencing with Section 32600) as added by both bills be given effect. It is also the intent of the Legislature that the provisions of this bill which add Chapter 3 (commencing with Section 32604) and Chapter 4 (commencing with Section 32611) of Division 22.8 of the Public Resources Code be integrated with Chapter 2 (commencing with Section 32603) and Chapter 5 (commencing with Section 32620) of Division 22.8 of the Public Resources Code, as added by Assembly Bill 1355, with the result that there be one Division 22.8 (commencing with Section 32600) of the Public Resources Code which would establish the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy.

SEC. 4. Section 2 of this act shall be operative only if this bill is chaptered after Assembly Bill 1355 of the 1999–2000 Regular Session.

SEC. 5. This bill shall become operative only if Assembly Bill 1355 of the 1999–2000 Regular Session is enacted and becomes effective on or before January 1, 2000.

CHAPTER 790

An act to amend Sections 6108, 6122, 6123, 6140, 6365, 6382, 6383, 6400, 6560, 6586, 6587, 6591, 6592, 6593, 6760, 6786, 6787, 6791, 6792, 6797, 8041, 8065, 8066, 8409, 8451, 8452, 8454, 8500, 8602, and 13001 of, and to repeal Sections 6120, 6121, 6380, 6381, 6588, 6589, 6590, 6788, 6789, 6790, 8042, 8450, and 8453 of, the Elections Code, relating to primary elections.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 6108 of the Elections Code is amended to read:

6108. The nomination paper for the presidential primary ballot shall be in substantially the following form:

SECTION OF NOMINATION PAPER SIGNED BY VOTER ON BEHALF OF A PRESIDENTIAL CANDIDATE OR UNCOMMITTED DELEGATE

Section _____ Page __

County of _____. Nomination paper of a candidate or uncommitted delegation for the presidential primary ballot.

State of California }
County of _____ } ss.

SIGNER'S STATEMENT

I, the undersigned, am a voter of the County of _____, State of California, and am registered as intending to affiliate with the Democratic Party. I hereby nominate _____ for the presidential primary to be held on the _____ day of _____, 20__. I have not signed the nomination paper of any other candidate or uncommitted delegation, and I further declare that I intend to support the candidate or uncommitted delegation named herein.

Number	Signature	Printed name	Residence
1.			
2.			
3.			
etc.			

CIRCULATOR'S AFFIDAVIT

I, _____, solemnly swear (or affirm) that I secured signatures in the County of _____ to the nomination paper of a candidate or uncommitted delegation for the presidential primary ballot named in the signer's statement above; that all the signatures on this section of the nomination paper numbered from 1 to ____, inclusive, were made in my presence, and that to the best of my knowledge and belief each signature is the genuine signature of the person whose name it purports to be. The signatures were obtained between _____, 20__ and _____, 20__.

(Signed)_____
Circulator

Subscribed and sworn to before me this _____ day of _____, 20__.

_____
(SEAL) Notary Public (or other official)

SEC. 2. Section 6120 of the Elections Code is repealed.

SEC. 3. Section 6121 of the Elections Code is repealed.

SEC. 4. Section 6122 of the Elections Code is amended to read:

6122. Circulators may obtain signatures to the nomination paper at any time between the period of 120 days and 75 days, inclusive, prior to the presidential primary election.

SEC. 5. Section 6123 of the Elections Code is amended to read:

6123. A county elections official or his or her deputy may not circulate a nomination paper and circulators may not obtain signatures within 100 feet of any election booth or polling place.

SEC. 6. Section 6140 of the Elections Code is amended to read:

6140. Each section of a nomination paper, after being verified, shall be returned by the circulator who circulated it to the steering committee, or to its duly authorized representatives. All the sections circulated in any county shall be collected by the steering committee, or its duly authorized representatives, and they shall arrange and leave the sections with the county elections official for examination.

SEC. 7. Section 6365 of the Elections Code is amended to read:

6365. The nomination paper for a candidate shall be in substantially the following form:

SECTION OF NOMINATION PAPER SIGNED BY VOTER ON BEHALF OF CANDIDATE

Section _____ Page _____

County of _____. Nomination paper for _____ as presidential nominee of the Republican Party.

State of California }
County of _____ } ss.

SIGNER'S STATEMENT

I, the undersigned, am a voter of the County of _____, State of California, and am registered as intending to affiliate with the Republican Party. I have not signed the nomination paper of any other candidates for the same office, and further declare that I intend to support the nomination of the candidate named herein at the Republican Party presidential primary to be held on the _____ day of _____, 20__.

Number	Signature	Printed name	Residence
1.			
2.			
3.			
etc.			

CIRCULATOR'S AFFIDAVIT

I, _____, solemnly swear (or affirm) that I secured signatures in the County of _____ to the nomination paper of the candidate

named in the signer's statement above as candidate for nomination by the Republican Party at its presidential primary election; that all the signatures on this section of the nomination paper numbered from 1 to _____, inclusive, were made in my presence, that the signatures were obtained between _____, 20__ and _____, 20__, and that to the best of my knowledge and belief each signature is the genuine signature of the person whose name it purports to be.

(Signed)_____
Circulator

Subscribed and sworn to before me this _____ day of _____, 20 __.

_____

(SEAL) Notary Public (or other official)

SEC. 8. Section 6380 of the Elections Code is repealed.

SEC. 9. Section 6381 of the Elections Code is repealed.

SEC. 10. Section 6382 of the Elections Code is amended to read:

6382. Circulators may obtain signatures to the nomination paper of a candidate at any time not more than 104 nor less than 74 days prior to the presidential primary.

SEC. 11. Section 6383 of the Elections Code is amended to read:

6383. A county elections official or deputy county elections official may not circulate a nomination paper. Circulators may not obtain signatures within 100 feet of any election booth or polling place.

SEC. 12. Section 6400 of the Elections Code is amended to read:

6400. Each section of a nomination paper shall be returned by the circulator who circulated it to the candidate or his or her designee. All the sections circulated in any county shall be collected by the candidate or his or her designee and he or she shall arrange and leave the sections with the county elections official for examination.

SEC. 13. Section 6560 of the Elections Code is amended to read:

6560. Any three or more voters of the state who are registered as intending to affiliate with the American Independent Party may join as a committee in proposing the nomination of a group of candidates for delegates. The committee may elect its officers, select the candidates for delegates, select the chairman of the committee, secure the endorsement of the person, if any, preferred by the committee as candidate for presidential nominee, appoint alternates, assemble and file all necessary papers, and take all other action which may be necessary for the organization and election of the group. The committee in performing its functions may act through its officers or designated representatives.

SEC. 14. Section 6586 of the Elections Code is amended to read:

6586. The nomination paper for a candidate for the presidential preference portion of the ballot shall be in substantially the following form:

SECTION OF NOMINATION PAPER SIGNED BY VOTER ON BEHALF OF PRESIDENTIAL PREFERENCE PRIMARY CANDIDATE

Section _____ Page _____

County of _____. Nomination paper of a presidential preference candidate for the American Independent Party presidential primary ballot.

State of California }
County of _____ } ss.

SIGNER'S STATEMENT

I, the undersigned, am a voter of the County of _____, State of California, and am registered as intending to affiliate with the American Independent Party. I hereby nominate _____ for the presidential preference portion of the American Independent Party's presidential primary ballot, to be voted for at the presidential primary to be held on the _____ day of _____, 20__. I have not signed the nomination paper of any other candidate for the same office, or for any group of delegates, to the national convention of the party, and I further declare that I intend to support the candidate named herein.

Number	Signature	Printed name	Residence
1.			
2.			
3.			
etc.			

CIRCULATOR'S AFFIDAVIT

I, _____, solemnly swear (or affirm) that I secured signatures in the County of _____ to the nomination paper of a candidate in the presidential preference primary of the American Independent Party; that all the signatures on this section of the nomination paper numbered from 1 to _____, inclusive, were made in my presence, that the signatures were obtained between _____, 20__, and _____, 20__, and that to the best of my knowledge and belief each signature is the genuine signature of the person whose name it purports to be.

I declare under penalty of perjury that the foregoing is true and correct.

(Signed)_____
Circulator

SEC. 15. Section 6587 of the Elections Code is amended to read:

6587. The nomination paper for a group of candidates for delegates, to the national convention shall be in substantially the following form:

SECTION OF NOMINATION PAPER SIGNED BY VOTER ON BEHALF OF GROUP OF CANDIDATES FOR DELEGATES TO NATIONAL CONVENTION

Section _____ Page _____

County of _____. Nomination paper of group of candidates for election as delegates by the American Independent Party pledged to the candidacy of _____ as presidential nominee or expressing no preference, as the case may be.

State of California }
County of _____ } ss.

SIGNER'S STATEMENT

I, the undersigned, am a voter of the County of _____, State of California, and am registered as intending to affiliate with the American Independent Party. I hereby nominate the following:

Number	Names	Residence city or town	County
1.			
2.			
3.			
etc.			

(to such number as may be required) etc., as candidates for delegates to the American Independent Party's National Convention, to be voted for at the presidential primary to be held on the _____ day of _____, 20__. I have not signed the nomination paper of any other candidates for the same office, or of any candidate for the presidential preference portion of the primary ballot, and I further declare that I intend to support for nomination the candidates named herein.

_____

Number	Signature	Printed name	Residence
1.			
2.			
3.			
etc.			

CIRCULATOR'S AFFIDAVIT

I, _____, solemnly swear (or affirm) that I secured signatures in the County of _____ to the nomination paper of the group of candidates named in the signer's statement above as candidates for nomination and election by the American Independent Party as delegates to represent the State of California in the party's next national convention; that all the signatures on this section of the nomination paper numbered from 1 to _____, inclusive, were made in my presence, that the signatures were obtained between

_____, 20__, and _____, 20__, and that to the best of my knowledge and belief each signature is the genuine signature of the person whose name it purports to be.

I declare under penalty of perjury that the foregoing is true and correct.

(Signed)_____
Circulator

SEC. 16. Section 6588 of the Elections Code is repealed.

SEC. 17. Section 6589 of the Elections Code is repealed.

SEC. 18. Section 6590 of the Elections Code is repealed.

SEC. 19. Section 6591 of the Elections Code is amended to read:

6591. Circulators may obtain signatures to the nomination paper of the candidate or group of candidates at any time not more than 104 nor less than 74 days prior to the presidential primary.

SEC. 20. Section 6592 of the Elections Code is amended to read:

6592. An elections official or deputy elections official may not serve as a circulator and circulators may not obtain signatures within 100 feet of any election booth or polling place.

SEC. 21. Section 6593 of the Elections Code is amended to read:

6593. Each section of a nomination paper, after being verified, shall be returned to the candidate, committee, or duly authorized representatives. All the sections circulated in any county shall be collected by the candidate, committee, or duly authorized representatives, who shall arrange and leave the sections with the elections official for examination.

SEC. 22. Section 6760 of the Elections Code is amended to read:

6760. Any five or more voters of the state who are registered as affiliated with the Peace and Freedom Party may join as a committee in proposing the nomination of a group of candidates for delegates. The committee may elect its officers, select the candidates for delegates, select the chairperson of the committee, secure the endorsement of the person, if any, preferred by the committee as candidate for presidential nominee, appoint alternates, assemble and file all necessary papers, and take all other action that may be necessary for the organization and election of the group. The committee in performing its functions may act through its officers or designated representatives.

SEC. 23. Section 6786 of the Elections Code is amended to read:

6786. The nomination paper for a candidate for the presidential preference portion of the ballot shall be in substantially the following form:

SECTION OF NOMINATION PAPER SIGNED BY VOTER ON BEHALF OF PRESIDENTIAL PREFERENCE PRIMARY CANDIDATE

Section _____ Page _____
County of _____.

Nomination paper of a presidential preference candidate for the Peace and Freedom Party presidential primary ballot.

State of California ⎫
County of _____ ⎭ ss.

SIGNER'S STATEMENT

I, the undersigned, am a voter of the County of _____, State of California, and am registered as affiliated with the Peace and Freedom Party. I hereby nominate _____ for the presidential preference portion of the Peace and Freedom Party's presidential primary ballot, to be voted for at the presidential primary to be held on the _____ day of June, 20__. I have not signed the nomination paper of any other candidate for the same office, or for any group of delegates to the national convention of the _____ Party, with which the Peace and Freedom Party of California is affiliated on the national level.

Number	Signature	Printed name	Residence street address /city
1.			
2.			
3.			
etc.			

CIRCULATOR'S DECLARATION

I, _____, affirm that I am a voter registered as affiliated with the Peace and Freedom Party in _____ County, that I secured signatures in the County of _____ to the nomination paper of a candidate in the presidential preference primary of the Peace and Freedom Party, that all the signatures on this section of the nomination paper numbered from 1 to _____, inclusive, were

made in my presence, that the signatures were obtained between _____, 20__, and _____, 20__, and that to the best of my knowledge and belief each signature is the genuine signature of the person whose name it purports to be.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____, California, this _____ day of _____, 20__.

(Signed)_____
Circulator

(Printed name)_____

SEC. 24. Section 6787 of the Elections Code is amended to read:

6787. The nomination paper for a group of candidates for delegates to the national convention shall be in substantially the following form:

SECTION OF NOMINATION PAPER SIGNED BY VOTER ON BEHALF OF GROUP OF CANDIDATES FOR DELEGATES TO NATIONAL CONVENTION

Section _____ Page _____
County of _____.

Nomination paper of group of candidates for election as delegates by the Peace and Freedom Party pledged to the candidacy of _____ as presidential nominee, or expressing no preference, as the case may be.

State of California ⎫
County of _____ ⎭ ss.

SIGNER'S STATEMENT

I, the undersigned, am a voter of the County of _____, State of California, and am registered as affiliated with the Peace and Freedom Party. I hereby nominate the following:

_____

_____

Number	Names	Residence city or town	County
1.			
2.			
3.			
etc.			

(to the number as may be required) as candidates for delegate to the national convention of the _____ Party, with which the Peace and Freedom Party of California is affiliated on the national level, to be voted for at the presidential primary to be held on the _____ day of March, 20____. I have not signed the nomination paper of any other group of candidates for delegates to the national convention or of any candidate for the presidential preference portion of the primary ballot.

_____

_____

Number	Signature	Printed name	Residence street address /city
1.			
2.			
3.			
etc.			

CIRCULATOR'S DECLARATION

I, _____, affirm that I am a voter registered as affiliated with the Peace and Freedom Party in _____ County, that I secured signatures in the County of _____ to the nomination paper of the group of candidates named in the signer's statement above as candidates for nomination and election by the Peace and Freedom Party as delegates to represent the Peace and Freedom Party of California in the _____ Party's next national convention, that all the signatures on this section of the nomination paper numbered from 1 to _____, inclusive, were made in my presence, that the signatures were obtained between _____, 20____, and _____, 20____, and that to the best of my knowledge and belief each signature is the genuine signature of the person whose name it purports to be.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____, California, this _____ day of _____, 20____.

(Signed)_____
Circulator

(Printed name)_____

SEC. 25. Section 6788 of the Elections Code is repealed.

SEC. 26. Section 6789 of the Elections Code is repealed.

SEC. 27. Section 6790 of the Elections Code is repealed.

SEC. 28. Section 6791 of the Elections Code is amended to read:

6791. Circulators may obtain signatures to the nomination paper of the candidate or group of candidates at any time not more than 104 nor less than 74 days prior to the presidential primary.

SEC. 29. Section 6792 of the Elections Code is amended to read:

6792. Each section of a nomination paper, after being verified, shall be returned by the verification deputy who circulated it to the candidate, committee, or duly authorized representatives. All the sections circulated in any county shall be collected by the candidate, committee, or duly authorized representatives, who shall arrange and leave the sections with the elections official for examination.

SEC. 30. Section 6797 of the Elections Code is amended to read:

6797. The certificate of the elections official to nomination papers of a candidate or group of candidates shall be in substantially the following form:

CERTIFICATE OF ELECTIONS OFFICIAL TO NOMINATION PAPERS OF CANDIDATE OR GROUP OF CANDIDATES

To the Secretary of State:

I, County Elections Official of the County of _____, hereby certify that I have examined the nomination papers, to which this certificate is attached, of the presidential candidate or group of candidates for delegates at the ensuing presidential primary, and that the number of names which I have not marked "not sufficient" is _____.

The candidate or group of candidates named in the nomination papers comprise the following (state names of candidates):

_____	_____	_____
_____	_____	_____
_____	_____	_____
etc.	etc.	etc.

Dated this _____day of _____, 20__.

(SEAL)

_____
County Elections Official
By _____
Deputy

SEC. 31. Section 8041 of the Elections Code is amended to read:

8041. (a) The nomination paper shall be in substantially the following form:

NOMINATION PAPER

I, the undersigned signer for _____ for the _____ Party nomination to the office of _____, to be voted for at the primary election to be held on the _____ day of _____, 20____, hereby assert as follows:

I am a resident of _____ County and registered to vote at the address shown on this paper and affiliated with the _____ Party. I am not at this time a signer of any other nomination paper of any other candidate for the above-named office, or in case there are several places to be filled in the above-named office, I have not signed more nomination papers than there are places to be filled in the above-named office. My residence is correctly set forth after my signature hereto:

Name _____

Residence _____

(b) The affidavit of the circulator shall read as follows:

AFFIDAVIT OF THE CIRCULATOR

I, _____, solemnly swear (or affirm) that the signatures on this section of the nomination paper were obtained between _____, 20____, and _____, 20____; that I circulated the petition and I saw the signatures on this section of the nomination paper being written; and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be.

My voting residence is _____.

Signed _____

Subscribed and sworn to before me this _____ day of _____, 20____.

(SEAL) _____

Notary Public (or other official)

Examined and certified by me this _____ day of _____, 20____.

_____

Elections Official

WARNING: Every person acting on behalf of a candidate is guilty of a misdemeanor who deliberately fails to file at the proper time and in the proper place any nomination paper in his or her possession which is entitled to be filed under Section 18202 of the Elections Code.

SEC. 32. Section 8042 of the Elections Code is repealed.

SEC. 33. Section 8065 of the Elections Code is amended to read:

8065. The elections official shall not accept for filing any nomination paper unless all blanks in the certificate are filled.

SEC. 34. Section 8066 of the Elections Code is amended to read:

8066. Circulators shall be voters in the district or political subdivision in which the candidate is to be voted on and shall serve only in that district or political subdivision.

SEC. 35. Section 8409 of the Elections Code is amended to read:

8409. Each candidate or group of candidates shall submit a nomination paper that shall be substantially in the following form:

County of _____. Nomination paper of _____, candidate for the office of _____.

State of California ⎫
County of _____ ⎭ ss.

SIGNER'S STATEMENT

I, undersigned, am a voter of the County of _____, State of California. I hereby nominate _____, who resides at No. _____, _____ Street, City of _____, County of _____, State of California, as a candidate for the office of _____ to be voted for at the election to be held on the _____ day of _____, 20____. I have not signed the nomination paper of any other candidate for the same office.

_____

_____

Number	Signature	Printed Name	Residence
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
etc.	_____	_____	_____

CIRCULATOR'S AFFIDAVIT

I, _____, solemnly swear (or affirm) that I secured signatures in the County of _____ to the nomination paper of _____ as candidate for the office of _____; that the signatures were obtained between _____, 20 __, and _____, 20__; that I saw all the signatures on this section of the nomination paper being signed and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be.

My residence address is _____

(Signed) _____
Circulator

Subscribed and sworn to before me this _____ day of _____, 20__.

_____
(SEAL) Notary Public (or other official)

SEC. 36. Section 8450 of the Elections Code is repealed.

SEC. 37. Section 8451 of the Elections Code is amended to read:

8451. Circulators shall be voters in the district or political subdivision in which the candidate is to be voted on and shall serve only in that district or political subdivision.

SEC. 38. Section 8452 of the Elections Code is amended to read:

8452. A county elections official or a deputy county elections official may not circulate nomination papers, and circulators shall not obtain signatures within 100 feet of any election booth or polling place.

SEC. 39. Section 8453 of the Elections Code is repealed.

SEC. 40. Section 8454 of the Elections Code is amended to read:

8454. (a) Circulators obtaining signatures to the nomination paper of any candidate may, at any time not more than 148 nor less than 88 days prior to the election, obtain signatures to the nomination paper of the candidate.

(b) Circulators obtaining signatures to the nomination paper of any candidate for presidential elector may, at any time not more than 193 nor less than 88 days prior to the election, obtain signatures to the nomination paper of the candidate.

SEC. 41. Section 8500 of the Elections Code is amended to read:

8500. Each section of a nomination paper, after being verified, shall be returned by the circulator who circulated it to the candidate. All the sections circulated in any area shall be collected by the candidate and shall be arranged for filing and examination.

SEC. 42. Section 8602 of the Elections Code is amended to read:

8602. The nomination papers for a write-in candidate shall be substantially in the same form as set forth in Section 8041.

SEC. 43. Section 13001 of the Elections Code, as amended by Section 1 of Chapter 1102 of the Statutes of 1996, is amended to read:

13001. (a) Except as provided in subdivision (b), all expenses authorized and necessarily incurred in the preparation for and conduct of elections as provided in this code shall be paid from the county treasuries, except that when an election is called by the governing body of a city the expenses shall be paid from the treasury of the city. All payments shall be made in the same manner as other county or city expenditures are made. The elections official, in providing the materials required by this division, need not utilize the services of the county or city purchasing agent.

(b) On and after January 1, 1996, all expenses authorized and necessarily incurred in the preparation for and conduct of elections proclaimed by the Governor to fill a vacancy in the office of Senator or Member of the Assembly, or to fill a vacancy in the office of United States Senator or Representative in the United States House of Representatives, shall be paid by the state. If an election proclaimed by the Governor to fill a vacancy in an office specified in this subdivision is consolidated with any other local election, only those additional expenses directly related to the election proclaimed by the Governor to fill a vacancy in the office shall be paid by the state.

(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 on or before January 1, 2005, deletes or extends that date.

SEC. 44. Section 13001 of the Elections Code, as amended by Section 2 of Chapter 1102 of the Statutes of 1996, is amended to read:

13001. (a) All expenses authorized and necessarily incurred in the preparation for and conduct of elections as provided in this code shall be paid from the county treasuries, except that when an election is called by the governing body of a city the expenses shall be paid from the treasury of the city. All payments shall be made in the same manner as other county or city expenditures are made. The elections official, in providing the materials required by this division, need not utilize the services of the county or city purchasing agent.

(b) This section shall become operative on January 1, 2005.

CHAPTER 791

An act to amend Sections 6020, 6022, 6023, 6041, 6042, 6081, 6084, 6086, 6101, 6122, 6160, 6201, 6202, 6203, 6204, and 7441 of, and to repeal Section 6221 of, the Elections Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 6020 of the Elections Code is amended to read:

6020. (a) The Chairperson of the Democratic State Central Committee shall notify the Secretary of State on or before the 120th day preceding the presidential primary as to the number of delegates and alternates to represent the state in the next national convention of the Democratic Party.

(b) The chairperson shall also notify the Secretary of State at the time prescribed in subdivision (a) as to the number of delegates that may be selected from each congressional district in connection with

the presidential primary. The number of delegates that may be selected from each congressional district shall be based on a formula that apportions 75 percent of the state's base delegation allocated by the Democratic National Committee, among the congressional districts in a manner that gives equal weight to the vote for the Democratic candidates in the most recent presidential and gubernatorial elections.

The number of delegates allocated to each congressional district shall be rounded off to the nearest whole integer. The remaining delegates and alternates shall be selected pursuant to Article 11 (commencing with Section 6200).

(c) Delegates and alternate delegates apportioned to each congressional district shall be selected based on the proportion of the vote a presidential candidate or uncommitted delegation receives within the congressional district pursuant to Section 6200.

SEC. 2. Section 6022 of the Elections Code is amended to read:

6022. The proportions of alternate delegates elected at the district level, at-large, and as unpledged and pledged add-on party and elected officials alternates shall be the same as the proportions of delegates elected in those categories.

Members of Congress serving as unpledged delegates shall not be entitled to name a replacement.

SEC. 3. Section 6023 of the Elections Code is amended to read:

6023. The notification of the number of delegates and alternate delegates shall be in substantially the following form:

Statement of Number of Delegates and Alternate Delegates to Democratic National Convention and of Number of Delegates and Alternate Delegates to Be Selected from Congressional Districts

To the Secretary of State
Sacramento, California

You are hereby notified that the number of delegates and alternate delegates to represent the State of California in the next national convention of the Democratic Party is _____.

You are hereby notified that the number of delegates which may be selected from all congressional districts as a part of the delegation to the national convention of the Democratic Party is as follows:

Congressional District No. 1. ____ delegates ____ alternates.
Congressional District No. 2. ____ delegates ____ alternates.
Congressional District No. 3. ____ delegates ____ alternates.
(Followed by the remaining congressional districts).

You are hereby notified that the number of pledged party and elected official delegates, at-large delegates, and at-large alternate delegates is as follows:

Unpledged Party Leaders and Elected Officials _____
Unpledged Add-on Delegates _____
Pledged Party and Elected Official Delegates _____
At-large Delegates _____
At-large Alternate Delegates _____
Dated this _____ day of _____, 19__.

_____
Chairperson of the State Central Committee of the Democratic Party.

SEC. 4. Section 6041 of the Elections Code is amended to read:

6041. The Secretary of State shall place the name of a candidate upon the presidential primary ballot when he or she has determined that the candidate is generally advocated for or recognized throughout the United States or California as actively seeking the nomination of the Democratic Party for President of the United States. The Secretary of State shall include as criteria for selecting candidates the fact of qualifying for funding under the Federal Elections Campaign Act of 1974, as amended.

Between the 150th day and the 63rd day preceding a presidential primary election, the Secretary of State shall publicly announce and distribute to the news media for publication a list of the selected candidates that he or she intends to place on the ballot at the following presidential primary election. After the 63rd day preceding a presidential primary election, the Secretary of State may add candidates to the selection, but he or she may not delete any presidential candidate whose name appears on the announced list except as provided in Section 6043.

SEC. 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 60th day before the presidential primary election.

SEC. 6. Section 6081 of the Elections Code is amended to read:

6081. The chairperson of a steering committee, at least 82 days prior to the presidential primary, shall file with the Secretary of State a statement containing the names and addresses of the members of the steering committee.

SEC. 7. Section 6084 of the Elections Code is amended to read:

6084. On or before the 56th day preceding the presidential primary, the Democratic State Central Committee shall transmit to the steering committee of each presidential candidate and uncommitted delegation a list of all persons who have filed a

declaration of candidacy for delegate pledged to that presidential candidate or uncommitted delegation.

SEC. 8. Section 6086 of the Elections Code is amended to read:

6086. On the 44th day preceding the presidential primary election, at 3 p.m., the caucus chairperson in each congressional district shall convene a caucus for the purpose of electing potential delegates and alternate delegates. The steering committee of each candidate or uncommitted delegation shall have sole authority to establish rules and procedures, including the naming of caucus chairpersons, by which the caucuses of that candidate or uncommitted delegation shall be conducted. The rules and procedures shall be uniform statewide, and in compliance with the Democratic State Central Committee's delegate selection and affirmative action plan. Each caucus shall elect a slate of delegate nominees in each congressional district pursuant to Article 2 (commencing with Section 6020), ranked in the manner specified by this section. The slate shall be transmitted to the steering committee of each candidate and uncommitted delegation.

Each participant at each caucus shall reside in, and be a registered Democrat of, the congressional district of the caucus he or she attends and each shall sign a statement of support for that presidential candidate or uncommitted delegation. Within five days after the convening of the caucus, the steering committee of each candidate or uncommitted delegation shall rank the delegate candidates from the slate of delegate candidates provided by each caucus pursuant to procedures in compliance with the Democratic State Central Committee's delegate selection and affirmative action plan. Immediately thereafter, the chairperson of a steering committee shall file with the Secretary of State a statement containing the names of delegate candidates in ranked order from each congressional district. In all cases, the slate for each congressional district shall be equal to the number of delegates and alternate delegates allotted to each congressional district pursuant to Section 6023.

SEC. 9. Section 6101 of the Elections Code is amended to read:

6101. Nomination papers to be circulated pursuant to Section 6061 shall be prepared, circulated, signed, and verified and shall be left for examination with the county elections official of the county in which they are circulated at least 63 days prior to the presidential primary election.

SEC. 10. Section 6122 of the Elections Code is amended to read:

6122. Circulators may obtain signatures to the nomination paper for which they were appointed at any time between the period of 120 days and 63 days, inclusive, prior to the presidential primary election.

SEC. 11. Section 6160 of the Elections Code is amended to read:

6160. At least 60 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. 12. Section 6201 of the Elections Code is amended to read:

6201. (a) District level delegate positions shall be allocated to presidential preferences through a primary proportional representation system.

(b) The 239 district-level delegates and 40 alternates shall be elected by preprimary caucuses to slate delegates followed by a presidential preference primary.

(1) The preprimary caucuses shall be conducted on Sunday, January 23, 2000, at 3 p.m.

(2) The presidential preference primary shall be conducted on Tuesday, March 7, 2000.

(c) The 239 delegates and 40 alternates shall be apportioned to districts as follows:

District	Delegates			Alternates		
	Females	Males	Total	Females	Males	Total
#1	3	2	5	0	1	1
#2	2	3	5	1	0	1
#3	3	2	5	0	1	1
#4	2	3	5	1	0	1
#5	3	2	5	0	1	1
#6	3	3	6	1	0	1
#7	2	3	5	1	0	1
#8	3	3	6	0	1	1
#9	3	3	6	0	1	1
#10	3	2	5	0	1	1
#11	2	2	4	1	0	1
#12	2	3	5	1	0	1
#13	3	2	5	0	1	1
#14	2	3	5	1	0	1
#15	3	2	5	0	1	1
#16	2	3	5	1	0	1
#17	3	2	5	0	1	1
#18	2	2	4	1	0	1
#19	2	2	4	0	1	1
#20	2	2	4	0	0	0
#21	2	2	4	0	0	0
#22	2	3	5	1	0	1
#23	3	2	5	0	1	1
#24	2	3	5	1	0	1
#25	2	2	4	0	0	0
#26	2	2	4	1	0	1
#27	3	2	5	0	1	1
#28	2	2	4	1	0	1
#29	3	3	6	0	1	1
#30	2	2	4	0	0	0
#31	2	2	4	0	0	0
#32	2	3	5	1	0	1

#33	2	2	4	0	0	0
#34	3	2	5	0	1	1
#35	2	3	5	1	0	1
#36	3	2	5	0	1	1
#37	2	2	4	1	0	1
#38	2	3	5	1	0	1
#39	2	2	4	0	1	1
#40	2	2	4	0	0	0
#41	2	2	4	0	0	0
#42	2	2	4	0	1	1
#43	2	2	4	0	0	0
#44	2	2	4	0	0	0
#45	2	2	4	1	0	1
#46	2	2	4	0	0	0
#47	2	2	4	0	1	1
#48	2	2	4	0	0	0
#49	3	2	5	0	1	1
#50	2	2	4	1	0	1
#51	2	2	4	1	0	1
#52	2	2	4	0	1	1

This apportionment shall be based on a formula giving equal weight to the vote for the Democratic candidates in the most recent presidential and gubernatorial elections.

(d) (1) An individual may qualify as a candidate for district-level delegate or alternate to the 2000 Democratic National Convention by filing a statement of candidacy and pledge of support with the state chair at the party office at 911 20th Street, Sacramento, California 95814. Statements can be requested from the state party beginning Tuesday, November 9, 1999. Candidacy statements can be returned beginning Tuesday, December 14, 1999, and must be received by the party office no later than 5 p.m., Thursday, January 6, 2000.

(2) All delegate candidates shall be identified as to presidential preference, uncommitted or unpledged status at all levels which determine presidential preference.

(e) The California primary election is a "binding" primary. Accordingly, delegate and alternate positions shall be allocated so as to fairly reflect the expressed presidential or uncommitted status of the primary voters in each district. Therefore, the national convention delegates elected at the district level shall be allocated in proportion to the percentage of the primary vote won in that district by each preference, except that preferences falling below a 15 percent threshold shall not be awarded any delegates or alternates.

(f) If no presidential preference reaches a 15 percent threshold, the threshold shall be the percentage of the vote received at each level of the delegate selection process by the front-runner minus 10 percent.

(g) Presidential candidates shall certify their authorized representatives to the state party chair no later than 5 p.m., December 16, 1999. The state party chair shall convey to the presidential candidate, or that candidate's authorized representative or representatives, not later than Tuesday, January 11, 2000, at 5 p.m., a list of all persons who have filed for delegate or alternate pledged to that presidential candidate. Each presidential candidate, or that candidate's authorized representative or representatives, shall file with the state party chair by Tuesday, January 18, 2000, at 5 p.m., a list of all the candidates he or she has approved, provided that approval is given to at least three times the number of candidates for delegate and three times the number of candidates for alternates to be selected. Failure to respond shall be deemed approval of all delegate and alternate candidates submitted to the presidential candidate unless the presidential candidate, or the candidate's authorized representative or representatives, signifies otherwise in writing to the state party chair no later than Tuesday, January 18, 2000, at 5 p.m.

(h) On Sunday, January 23, 2000, candidate and uncommitted caucuses shall be held to elect a slate of potential delegates equal to at least the number of delegates plus alternates allocated to the congressional district. The California delegation shall be equally divided between delegate men and delegate women, and alternate men and alternate women. These goals apply to the California delegation as a whole. Delegates and alternates shall be considered separate groups for purposes of achieving equal division.

Provisions for achieving equal division at the district level shall be as follows: Each candidate and uncommitted caucus shall elect a slate of potential delegates equal to at least the number of delegates plus alternates allocated to that congressional district. Potential delegates shall be ranked pursuant to procedures in compliance with the Democratic State Central Committee's delegate selection and affirmative action plan. Following the primary, delegate and alternate positions allocated to a presidential candidate or uncommitted delegation shall be filled from the list of ranked potential delegates in the order in which they are ranked.

(i) The State Democratic Chair shall certify in writing to the Secretary of the Democratic National Committee (DNC) the election of the state's district level delegates and alternates to the Democratic National Convention within three days after their election.

SEC. 13. Section 6202 of the Elections Code is amended to read:

6202. (a) The following individuals shall constitute the unpledged delegate positions:

(1) Members of the DNC who legally reside in the state.

(2) The Governor if he or she is a Democrat.

(3) All Democratic Members of Congress who legally reside in the state.

(4) All "distinguished party leader" delegates who legally reside in the state.

(5) Five add-on delegates.

(b) The procedures to be used in selecting the five add-on unpledged delegates shall be as follows:

(1) The add-on delegates shall be nominated by the state party chair and elected at the meeting of district level delegates on Saturday, April 8, 2000. These delegates shall be selected after the election of district-level delegates and alternates, and prior to the selection of the pledged party and elected official delegates.

(2) The equal division and affirmative action provisions of Rule 9A of the Delegate Selection Rules for the 2000 Democratic National Convention apply to the selection of these add-on unpledged delegates.

(3) The list from which the selecting body chooses the add-on unpledged delegates shall, at a minimum, contain two names for every unpledged add-on position to be filled.

(c) The process for certification of the unpledged party leader and elected official delegates is as follows:

(1) Not later than March 1, 2000, the Secretary of the Democratic National Committee shall officially confirm to the State Democratic Chair the names of the unpledged delegates who legally reside in California.

(2) Official confirmation by the Secretary shall constitute verification of the unpledged delegates from the categories indicated above.

(3) Add-on unpledged delegates, selected pursuant to the Call for the 2000 Democratic National Convention, shall be certified in writing to the Secretary of the DNC within three days after their selection.

SEC. 14. Section 6203 of the Elections Code is amended to read:

6203. (a) California is allotted 48 pledged party leader and elected official delegates.

(b) Individuals shall be eligible for the pledged party leader and elected official delegate positions according to the following priority: big city mayors and statewide elected officials (to be given equal consideration), state legislative leaders, state legislators, and other state, county, and local elected officials and party leaders.

(c) These delegates shall be selected by a committee consisting of all the district-level delegates.

(d) Selection of these delegates shall occur on Sunday, April 9, 2000, at a site and time to be determined by the state party chair. The selection of these delegates shall be after the election of district delegates and alternates and the unpledged add-on delegates and prior to the selection of at-large delegates and alternates.

(e) An individual may qualify as a candidate for a position as a pledged party leader and elected official delegate by filing a statement of candidacy and pledge of support with the state party

chair that includes all the provisions included in the statement of candidacy and pledge of support required of district-level candidates. An individual may or may not previously have filed a statement of candidacy and still be eligible to file under this category. Statements shall be available at the state party beginning December 28, 1999. Statements shall be accepted beginning January 10, 2000, and ending March 9, 2000, at 5 p.m.

(f) These pledged party leader and elected official slots shall be allocated among presidential preferences on the same basis as the at-large delegates.

(g) Delegate candidates shall be identified as to presidential or uncommitted status at the pledged party and elected official level. If persons eligible for pledged party and elected official delegate positions have not made known their presidential preference as candidates for district level or at-large delegate positions, their preference shall be ascertained through the aforementioned required qualification statement.

(h) The state party chair shall convey to the presidential candidate, or that candidate's authorized representative or representatives, not later than March 15, 2000, a list of all persons who have filed for a party and elected official delegate pledged to that presidential candidate. Each presidential candidate, or that candidate's authorized representative or representatives, shall then file with the state party chair, by March 21, 2000, a list of all the candidates he or she has approved, provided that approval is given to at least two times the number of candidates for delegate to be selected. Failure to respond shall be deemed approval of all delegate candidates submitted to the presidential candidate unless the presidential candidate, or the candidate's authorized representative or representatives, signifies otherwise in writing to the state party chair no later than 5 p.m. on March 21, 2000.

(i) Alternates are not selected at the pledged party leader and elected official level. These alternates are combined with the at-large alternates and selected as one unit.

(j) The state party chair shall certify in writing to the Secretary of the DNC the election of the state's pledged party leader and elected official delegates and alternates to the Democratic National Convention within three days after their election.

SEC. 15. Section 6204 of the Elections Code is amended to read:

6204. (a) The State of California is allotted 80 at-large delegates and 21 at-large alternates.

(b) These delegates and alternates shall be selected by a committee consisting of all the district-level delegates on Sunday, April 9, 2000. The selection shall occur after all unpledged delegates and pledged party leader and elected official delegates have been selected.

(c) At-large delegate and alternate positions shall be allocated among presidential preferences according to the statewide primary

vote. Preferences which have not attained a 15 percent threshold on a statewide basis shall not be entitled to any at-large delegates.

If a given presidential preference is entitled to one or more delegate positions but would not otherwise be entitled to an alternate position, that preference shall be allotted one at-large alternate position.

(d) In the selection of the at-large delegation, priority of consideration shall be given to African Americans, Hispanics, Native Americans, Asian/Pacific Americans, lesbian women, gay men, the disabled, and women. The election of at-large delegates and alternates shall be used, if necessary, to achieve the equal division of positions between men and women, and may be used to achieve the representation goals established in the affirmative action section of this plan. Delegates and alternates are to be considered separate groups for this purpose.

(e) Persons desiring to seek these at-large delegate or alternate positions may file a statement of candidacy designating their presidential or uncommitted preference and a signed pledge of support for the presidential candidates (including uncommitted status) with the state party by 5 p.m., March 21, 2000. The state party chair shall convey to the presidential candidate, or that candidate's authorized representative or representatives, not later than March 28, 2000, a list of all persons who have filed for delegate or alternate pledged to that presidential candidate. Each presidential candidate, or that candidate's authorized representative or representatives, at the meeting of the district-level delegates on April 9, 2000, must provide to the State Democratic Chair, within 30 minutes after the pledged party leaders and elected officials have been selected by the committee of district-level delegates, a list of all the candidates he or she has approved, provided that, at a minimum, two names remain for every national convention delegate or alternate position to which the presidential candidate is entitled.

(f) The statement of candidacy for at-large delegates and for at-large alternates shall be the same. After the at-large delegates are elected by the district level delegates, those persons not chosen shall then be considered candidates for at-large alternate positions unless they specify otherwise when filing.

(g) If a presidential candidate is no longer a candidate at the time of selection of the at-large delegates, those at-large slots that would have been allocated to the candidate shall be proportionally divided among the remaining preferences entitled to an allocation.

(h) The state party chair shall certify in writing to the Secretary of the DNC the election of the state's at-large delegates and alternates to the Democratic National Convention within three days after their election.

SEC. 16. Section 6221 of the Elections Code is repealed.

SEC. 17. 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.

(a) Except as provided in subdivision (b), after each election, an organizational or reorganizational meeting shall take place within 30 days after new county central committee members receive certificates of election.

(b) Members of the Central Committee of the County of Orange shall assume office and hold an organizational meeting on the first Monday in December of each even-numbered year.

SEC. 18. 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 this bill may take effect as soon as possible in order to facilitate preparation for the March 7, 2000, state primary election, it is necessary that this act take effect immediately.

CHAPTER 792

An act to add Section 19849.18 to the Government Code, relating to state employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 19849.18 is added to the Government Code to read:

19849.18. Supervisors of state employees represented by State Bargaining Unit 5, 6, or 8 shall receive salary and benefits changes that are at least generally equivalent to the salary and benefits granted to employees they supervise. For purposes of this section, "salary" means base pay and shall not be construed to include such forms of compensation as overtime. The benefit package shall be the economic equivalent, but the benefits need not be identical. The determination of the specific benefits that supervisors of state employees represented by State Bargaining Unit 5, 6, or 8 shall receive shall be made through a meet and confer process as defined in Section 3533.

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 the provisions of this act to be applicable as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 793

An act relating to armories, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. The appropriation and respective allocations made by this act are in augmentation of the appropriations made in Section 2.00 of the Budget Act of 1999 (Chapter 50, Statutes of 1999) and are subject to the provisions of that act, as appropriate, including the provisions of that act that apply to the items of appropriation that are augmented by this act. The references in this act to item numbers refer to items of appropriation in Section 2.00 of the Budget Act of 1999.

SEC. 2. The sum of one million three hundred sixty-five thousand dollars ($1,365,000) is hereby appropriated from the General Fund, to be allocated as follows:

(a) (1) Five hundred ninety-two thousand five hundred dollars ($592,500) to the Military Department, in augmentation of Item 8940-001-0001.

(2) Notwithstanding Provision 3 of Item 8940-001-0001, the Adjutant General shall expend these additional funds to expand the available shelters to include the El Centro and Calexico armories in Imperial County; the Inglewood, Long Beach, Pomona, Sylmar, and West Los Angeles armories in Los Angeles County; the San Rafael armory in Marin County; the Roseville armory in Placer County; the Corona armory in Riverside County; the Escondido and El Cajon armories in San Diego County; the San Jose armory in Santa Clara County; the Watsonville armory in Santa Cruz County; and the Petaluma armory in Santa Rosa County; to increase or decrease the number of days of operation among all of the funded armories to best meet the cold-weather demands as they develop, and to meet unanticipated needs for temporary shelter for homeless families and persons at no nightly charge to a county or city at the armories authorized in Item 8940-001-0001. The Adjutant General shall periodically report to the counties authorized to receive funds on the ongoing availability of remaining shelter days.

The Adjutant General shall have the authority, in his or her sole discretion, to use alternate unfunded armories within a funded county as may be necessary to meet the operational needs of the

Military Department or at the request of the county government with the approval of the department.

(3) Notwithstanding Section 15301 of the Government Code, the Adjutant General may provide temporary shelter for homeless families and persons at any suitable armory pursuant to the requirements of Sections 15301.1, 15301.3, and 15301.6 of the Government Code.

(4) Notwithstanding Section 15301 of the Government Code, the Military Department may operate temporary emergency shelters from October 15 to April 15, inclusive, on an as-needed basis.

(5) Notwithstanding Provision 3 of Item 8940-001-0001, if either of the funded armories in Santa Barbara County is unavailable during the winter of 1999–2000 because of temporary closure for reconstruction, the Adjutant General shall transfer the funds for the operation of the closed armory to Santa Barbara County for the provision of alternative temporary cold weather shelter for homeless families and persons.

(b) (1) Seven hundred seventy-two thousand five hundred dollars ($772,500) to the Department of Housing and Community Development in augmentation of Item 2240-105-0001 for transfer to the Emergency Housing and Assistance Fund.

(2) The allocation of these funds shall be in the form of grants to counties. The department shall allocate funds based on factors related to persons in poverty and unemployment, giving consideration to cold weather factors. In applying its criteria, the department shall only fund those counties in which the application of the above factors produces an allocation of at least five thousand dollars ($5,000). As a condition of funding, county applicants shall provide reasonable assurances to the department that there are adequate local resources to provide safe, secure, and effective facilities for a cold weather season to be defined by the county in the application. Allocated funds shall be used to reimburse the Military Department for the use of local armories, unless the department concludes either that there is no available suitable armory or that an alternative facility is a more effective alternative. It is the intent of the Legislature that the allocation process be expedited to ensure the availability of shelter for homeless families and persons and that the department's processing time be kept to a minimum. The distribution of these funds shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) The Director of Housing and Community Development shall expend these additional funds only to provide emergency housing and services to homeless families and persons in those counties that do not have temporary shelter provided in National Guard armories operated by the Military Department and funded in Item 8940-001-0001 or identified in paragraph (2) of subdivision (a).

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 make certain necessary augmentations and adjustments to the appropriations made by the Budget Act of 1999 for support of state government for the 1999–2000 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 794

An act to add and repeal Article 5.5 (commencing with Section 11629.7) of Chapter 1 of Part 3 of Division 2 of the Insurance Code, and to add Section 16020.1 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. It is the goal of the Legislature that the pilot program established by this act, if successful, should be expanded statewide.

SEC. 2. Article 5.5 (commencing with Section 11620.7) is added to Chapter 1 of Part 3 of Division 2 of the Insurance Code, to read:

Article 5.5. County of Los Angeles Low-Cost Automobile Insurance Pilot Program

11629.7. (1) There is established, within the California Automobile Assigned Risk Plan established under Section 11620, a low-cost automobile insurance pilot program for the County of Los Angeles.

(2) The commissioner, after a public hearing, shall approve or issue a reasonable plan for the equitable apportionment, among insurers required to participate in the California Automobile Assigned Risk Plan established under Section 11620, of persons residing in the County of Los Angeles who are eligible to purchase through the pilot program established in that county a low-cost automobile insurance policy, as described in Section 11629.71. The pilot program shall be conducted in conjunction with the California Automobile Assigned Risk Plan established under Section 11620.

11629.71. A low-cost automobile insurance policy for purposes of the pilot program established under this article shall have all of the following attributes:

(a) The policy shall offer coverage in the amount of ten thousand dollars ($10,000) for bodily injury to, or death of, each person as a

result of any one accident and, subject to that limit as to one person, the amount of twenty thousand dollars ($20,000) for bodily injury to, or death of all persons as a result of any one accident, and the amount of three thousand dollars ($3,000) for damage to property of others as a result of any one accident.

(b) The policy shall have an initial term of one year, renewable on an annual basis thereafter.

(c) The policy shall cover the person named in the policy, and to the same extent that insurance is provided to the named insured, any other person using the automobile, provided the use is with his or her permission, express or implied, and within the scope of that permission, except that the policy shall not cover members of the named insured's household who do not satisfy the requirements of subdivisions (b) to (e), inclusive, of Section 11629.73.

(d) The policy shall provide coverage for an automobile with a value, at the time of purchase by the insured, of twelve thousand dollars ($12,000) or less, as evidenced by the value given to the automobile by the Department of Motor Vehicles in assessing vehicle license fees.

11629.72. (a) The annual rate offered initially under the pilot program for the low-cost automobile insurance policy, until the time that the rate is adjusted, shall be four hundred fifty dollars ($450). A surcharge of 25 percent of the base rate shall be added if the named insured is an unmarried male between the ages of 19 and 24, inclusive, or if an unmarried male between the ages of 19 and 24, inclusive, resides in the household of the named insured and will be a driver of the automobile covered under the low-cost policy.

(b) In addition to existing premium installment options offered by the California Automobile Assigned Risk Plan under Article 4 (commencing with Section 11620), the plan shall also make available to an insured under the pilot program, a premium installment option pursuant to which an insured is required to pay one hundred dollars ($100) upon issuance of the low-cost policy, followed thereafter by six other payments. No other premium financing arrangement shall be permitted.

(c) Rates for policies issued under the pilot program shall be reviewed and revised as follows:

(1) Rates shall be sufficient to cover (A) losses incurred under policies issued under the pilot program, and (B) expenses, including, but not limited to, all reasonable and necessary expenses such as the costs of administration, underwriting, taxes, commissions, and claims adjusting, that are incurred due to participation in this pilot program. For purposes of this paragraph, "losses incurred" means claims paid, claims incurred and reported, and claims incurred but not yet reported. In assessing loss reserves, the commissioner shall only allow loss reserves that are estimated from actual losses in the pilot program or comparable data by a licensed statistical agent, as adjusted to reflect coverage provided under this pilot program.

(2) Rates shall be set so as to result in no projected subsidy of the pilot program by those policyholders of insurers issuing policies under the pilot program who are not participants in the pilot program.

(3) Rates shall be set with respect to this pilot program, and the pilot program established in Article 5.6 (commencing with Section 11629.9), so as to result in no projected subsidy by policyholders in one pilot program of policyholders in the other pilot program.

(4) Commencing on January 1, 2001, and annually thereafter, the California Automobile Assigned Risk Plan shall submit the loss and expense data, together with a proposed rate for the low-cost automobile policy for the pilot program, to the commissioner for approval in accordance with this chapter. The commissioner shall act on the recommendation within 90 days.

11629.73. A low-cost automobile insurance policy under the pilot program shall only be available for purchase by persons who satisfy the following eligibility requirements:

(a) The person shall be in a household with a gross annual household income that does not exceed 150 percent of the federal poverty level.

(b) The person shall be no less than 19 years of age and have been continuously licensed to drive an automobile for the previous three years.

(c) The person shall have not more than one of either, but not both, of the following within the previous three years:

(1) A property damage only accident in which the driver was principally at fault.

(2) A point for a moving violation.

(d) The person shall not have on record within the previous three years, an at-fault accident involving bodily injury or death.

(e) The person shall not have a felony or misdemeanor conviction for a violation of the Vehicle Code on his or her motor vehicle record.

(f) The person shall not be a college student claimed as a dependent of another person for federal or state income tax purposes.

11629.74. (a) Application may be made through any producer certified by the plan. The applicant, in order to demonstrate financial eligibility to purchase a low-cost automobile insurance policy under the pilot program, shall present at the time of applying for the policy, a copy of the applicant's federal or state income tax return for the previous year or other reliable evidence from a governmental agency or governmental means-tested program of the applicant's gross annual household income, pursuant to regulations issued under subdivision (b) of Section 11629.79.

(b) The applicant shall certify that the representations made in the documents submitted as proof of financial eligibility and in the application for the policy are true, correct, and contain no material

misrepresentations or omissions of fact to the best knowledge and belief of the applicant.

(c) The certified producer shall forward the application, supporting documents, and the applicant's certification to the California Automobile Assigned Risk Plan.

11629.75. (a) A certified producer shall provide to an applicant for a low-cost automobile insurance policy under this article a notice relating to coverage under the policy. The notice shall be provided in a separate document at the time of application, and include the following statement in 14-point boldface type:

"NOTICE

INSURANCE COVERAGE PROVIDED IN THE POLICY YOU ARE BUYING CONTAINS REDUCED LIABILITY COVERAGE FOR PERSONAL INJURIES OR PROPERTY DAMAGE RESULTING FROM THE OPERATION OF THE INSURED VEHICLE. IF LOSSES FROM AN AUTOMOBILE ACCIDENT EXCEED THE COVERAGE PROVIDED BY THIS POLICY, YOU CAN BE HELD PERSONALLY LIABLE AND RESPONSIBLE FOR THOSE LOSSES.

THIS POLICY PROVIDES LIABILITY COVERAGE FOR INJURIES OR DEATH CAUSED TO OTHER PERSONS IN THE TOTAL AMOUNT OF TEN THOUSAND DOLLARS ($10,000) PER PERSON IN ANY ONE ACCIDENT, AND UP TO A TOTAL AMOUNT OF TWENTY THOUSAND ($20,000) FOR ALL PERSONS IN ANY ONE ACCIDENT. THE POLICY ALSO PROVIDES UP TO A TOTAL AMOUNT OF THREE THOUSAND DOLLARS ($3,000) IN LIABILITY COVERAGE FOR PROPERTY DAMAGE IN ANY ONE ACCIDENT. IF YOU WANT MORE INSURANCE COVERAGE, YOU MUST REQUEST A DIFFERENT POLICY.

THIS POLICY ALSO DOES NOT COVER DAMAGE TO YOUR OWN VEHICLE, LOSSES RESULTING FROM YOUR BODILY INJURY OR DEATH, OR COVERAGE FOR LOSSES CAUSED BY AN UNINSURED OR UNDERINSURED DRIVER. HOWEVER, THESE OTHER COVERAGES MAY BE AVAILABLE AT EXTRA COST THROUGH OTHER INSURERS.

THIS POLICY DOES NOT COVER ANY OTHER DRIVER IN YOUR HOUSEHOLD WHO:

(a) IS UNDER 19 YEARS OF AGE; OR

(b) HAS LESS THAN 3 YEARS OF CONTINUOUSLY LICENSED DRIVING EXPERIENCE; OR

(c) HAS MORE THAN ONE OF EITHER, OR BOTH, OF THE FOLLOWING:

—A PROPERTY DAMAGE ONLY ACCIDENT IN WHICH THE DRIVER WAS PRINCIPALLY AT FAULT.

—A POINT FOR A MOVING VIOLATION; OR

(d) HAS IN THE PREVIOUS 3 YEARS AN AT-FAULT ACCIDENT INVOLVING BODILY INJURY OR DEATH; OR

(e) HAS A FELONY OR MISDEMEANOR CONVICTION FROM A VIOLATION OF THE VEHICLE CODE ON HIS OR HER MOTOR VEHICLE RECORD."

(b) When the certified producer establishes delivery of the disclosure form specified in subdivision (a) by obtaining the signature of the applicant or insured, there shall be a conclusive presumption that the certified producer has complied with the disclosure requirements of this section.

11629.76. For a low-cost automobile insurance policy issued pursuant to the pilot program, certified producers shall be entitled to the same commission rate as is paid by the California Automobile Assigned Risk Plan for private passenger, nonfleet risks under Article 4 (commencing with Section 11620). No other fees of any kind may be charged or collected in this regard and the sale of a low-cost policy under this article shall not be conditioned on the purchase of any other product or service.

11629.77. (a) A low-cost automobile insurance policy issued pursuant to the pilot program shall be canceled only for the following reasons:

(1) Nonpayment of premium.

(2) Fraud or material misrepresentation affecting the policy or the insured.

(3) The purchase of additional automobile liability insurance coverage in violation of subdivision (a) of Section 11629.78.

(4) The purchase or maintenance of automobile liability insurance coverage other than a low-cost policy for any additional vehicles in the insured's household, in violation of subdivision (b) of Section 11629.78.

(b) A policy shall be nonrenewed only for the following reasons:

(1) A substantial increase in the hazard insured against.

(2) The insured no longer meets the applicable eligibility requirements. In this regard, the eligibility of an insured shall be recertified by the California Automobile Assigned Risk Plan after the

first year of eligibility, and annually thereafter by the insurer that issued the policy.

11629.78. (a) An insured under the pilot program shall not purchase automobile liability insurance coverage that is in addition to the liability coverage provided by the low-cost policy. However, the insured may purchase any other additional type of automobile insurance coverage, such as uninsured motorist coverage or collision coverage outside the plan.

(b) An insured under the pilot program shall not purchase or maintain any automobile liability insurance coverage other than a low-cost policy for any additional vehicles in the insured's household.

(c) No more than two low-cost policies are permitted in an insured's household.

11629.79. (a) The pilot program is authorized to commence operations on January 1, 2000, but shall be fully operational no later than July 1, 2000.

(b) To this end, the commissioner, in consultation with the California Automobile Assigned Risk Plan, shall adopt regulations to implement the provisions of this article within 60 days of its effective date. The regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code, and for purposes of that chapter, 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.

11629.8. Notwithstanding the coverage amounts required by Section 16056 of the Vehicle Code, a low-cost automobile policy issued under the pilot program shall satisfy the financial responsibility requirements of Section 16021 of the Vehicle Code.

11629.81. The California Automobile Assigned Risk Plan shall report to the Legislature on an annual basis, commencing January 1, 2001, and at those additional times as it deems prudent, on the status of the pilot program.

11629.82. Nothing in this article is intended to amend or otherwise affect or interpret any provision of Proposition 103, approved by the electors on November 8, 1988, and no provision of that initiative measure applies to this article.

11629.83. An action challenging the constitutionality of the establishment of the pilot program by this article shall be commenced in a court of competent jurisdiction no later than February 1, 2000.

11629.84. 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. 3. Section 16020.1 is added to the Vehicle Code, to read:

16020.1. (a) On and after January 1, 2004, Section 4000.37 does not apply in the County of Los Angeles.

(b) On and after January 1, 2004, subdivision (a) and (b) of Section 16028 do not apply to a person who drives a motor vehicle upon a highway in the County of Los Angeles.

CHAPTER 795

An act to amend Sections 7071.5, 7071.10, and 7071.11 of the Business and Professions Code, and to amend Sections 3089, 3097, 3098, and 3111 of, and to repeal Section 3111.5 of, the Civil Code, relating to contractors.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 7071.5 of the Business and Professions Code is amended to read:

7071.5. The contractor's bond required by this article shall be executed by an admitted surety in favor of the State of California, in a form acceptable to the registrar and filed with the registrar by the licensee or applicant. The contractor's bond shall be for the benefit of the following:

(a) Any homeowner contracting for home improvement upon the homeowner's personal family residence damaged as a result of a violation of this chapter by the licensee.

(b) Any person damaged as a result of a willful and deliberate violation of this chapter by the licensee, or by the fraud of the licensee in the execution or performance of a construction contract.

(c) Any employee of the licensee damaged by the licensee's failure to pay wages.

(d) Any person or entity, including an express trust fund described in Section 3111 of the Civil Code, to whom a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, damaged as the result of the licensee's failure to pay fringe benefits for its employees, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations thereunder (without regard to whether the work was performed on a private or public work). Damage to an express trust fund is limited to actual employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

SEC. 2. Section 7071.10 of the Business and Professions Code is amended to read:

7071.10. (a) The qualifying individual's bond required by this article shall be executed by an admitted surety insurer in favor of the

State of California, in a form acceptable to the registrar and filed with the registrar by the qualifying individual. The qualifying individual's bond shall be for the benefit of the following persons:

(1) Any homeowner contracting for home improvement upon the homeowner's personal family residence damaged as a result of a violation of this chapter by the licensee.

(2) Any person damaged as a result of a willful and deliberate violation of this chapter by the licensee, or by the fraud of the licensee in the execution or performance of a construction contract.

(3) Any employee of the licensee damaged by the licensee's failure to pay wages.

(4) Any person or entity, including an express trust fund described in Section 3111 of the Civil Code, to whom a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, that is damaged as the result of the licensee's failure to pay fringe benefits for its employees including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations adopted thereunder (without regard to whether the work was performed on a public or private work). Damage to an express trust fund is limited to employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

(b) The qualifying individual's bond shall not be required in addition to the contractor's bond when the qualifying individual is himself or herself the proprietor under subdivision (a) or a general partner under subdivision (b) of Section 7068.

SEC. 3. Section 7071.11 of the Business and Professions Code is amended to read:

7071.11. (a) A copy of the complaint in a civil action commenced by a person claiming against a bond required by this article shall be served by registered or certified mail upon the registrar by the clerk of the court at the time the action is commenced and the registrar shall maintain a record, available for public inspection, of all actions so commenced. The aggregate liability of a surety on a claim for wages and fringe benefits brought against any bond required by this article, other than a bond required by Section 7071.8, shall not exceed the sum of four thousand dollars ($4,000). If any bond which may be required is insufficient to pay all claims in full, the sum of the bond shall be distributed to all claimants in proportion to the amount of their respective claims. Any action, other than an action to recover wages or fringe benefits, against a contractor's bond or a bond of a qualifying individual filed by an active licensee shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover wages or fringe benefits, against a disciplinary

bond filed by an active licensee pursuant to Section 7071.8 shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within two years after the last date for which a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first. A claim to recover wages or fringe benefits shall be brought within six months from the date that the wage or fringe benefit delinquencies were discovered, but in no event shall a civil action thereon be brought later than two years from the date the wage or fringe benefit contributions were due.

(b) When the surety makes payment on any claim against a bond required by this article, whether or not payment is made through a court action or otherwise, the surety shall, within 30 days of the payment, notify the registrar. The notice shall contain, on a form prescribed by the registrar, the name and license number of the contractor, the surety bond number, the amount of payment, the statutory basis upon which the claim is made, and the names of the person or persons to whom payments are made.

(c) Any judgment or admitted claim against, or good faith payment from, a bond required by this article shall constitute grounds for disciplinary action against the licensee, except in those cases of good faith payment where the licensee has, in writing, timely instructed the surety not to make payment from the bond on his or her account, upon the specific grounds that (1) the claim is opposed by the licensee, and (2) the licensee has, in writing, previously directed to the surety a specific and reasonable basis for his or her opposition to payment. The license may not be reissued or reinstated while any judgment or admitted claim in excess of the amount of the bond remains unsatisfied. Further, the license may not be reissued or reinstated while any surety remains unreimbursed for loss and expense sustained on any bond issued for the licensee or for any entity of which any officer, director, member, partner, or qualifying person was an officer, director, member, partner, or qualifying person of the licensee while the licensee was subject to disciplinary action under this section. The board shall require the licensee to file a new bond in an amount as required pursuant to Section 7071.8.

(d) Legal fees may not be charged against the bond by the board.

(e) In any case in which a claim is filed against a deposit given in lieu of a bond by any employee or by an employee organization on behalf of an employee, concerning wages or fringe benefits based upon the employee's employment, claims for the nonpayment thereof shall be filed with the Labor Commissioner. The Labor Commissioner shall, pursuant to the authority vested by Section 96.5 of the Labor Code, conduct hearings to determine whether or not the wages or fringe benefits should be paid to the complainant. Upon a finding by the commissioner that the wages or fringe benefits should be paid to the complainant, the commissioner shall notify the

registrar of the findings. The registrar shall not make payment from the deposit on the basis of findings by the commissioner for a period of 10 days following determination of the findings. If, within the period, the complainant or the contractor files written notice with the registrar and the commissioner of an intention to seek judicial review of the findings pursuant to Section 11523 of the Government Code, the registrar shall not make payment, if an action is actually filed, except as determined by the court. If, thereafter, no action is filed within 60 days following determination of findings by the commissioner, the registrar shall make payment from the deposit to the complainant.

(f) Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a contractor's bond or bond of a qualifying individual filed by an active licensee shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years after the date the license was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within two years after the last date for which a deposit given in lieu of a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first.

SEC. 4. Section 3089 of the Civil Code is amended to read:

3089. (a) "Laborer" means any person who, acting as an employee, performs labor upon or bestows skill or other necessary services on any work of improvement.

(b) "Laborer" also includes any person or entity, including an express trust fund described in Section 3111, to whom a portion of the compensation of a laborer as defined in subdivision (a) is paid by agreement with that laborer or the collective bargaining agent of that laborer. To the extent that a person or entity defined in this subdivision has standing under applicable law to maintain a direct legal action, in their own name or as an assignee, to collect any portion of compensation owed for a laborer, that person or entity shall have standing to enforce any rights under this title to the same extent as the laborer. This section is intended to give effect to the long-standing public policy of this state to protect the entire compensation of laborers on works of improvement, regardless of the form in which that compensation is to be paid.

SEC. 5. Section 3097 of the Civil Code is amended to read:

3097. "Preliminary 20-day notice (private work)" means a written notice from a claimant that is given prior to the recording of a mechanic's lien, prior to the filing of a stop notice, and prior to

asserting a claim against a payment bond, and is required to be given under the following circumstances:

(a) Except one under direct contract with the owner or one performing actual labor for wages as described in subdivision (a) of Section 3089, or a person or entity to whom a portion of a laborer's compensation is paid as described in subdivision (b) of Section 3089, every person who furnishes labor, service, equipment, or material for which a lien or payment bond otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, shall, as a necessary prerequisite to the validity of any claim of lien, payment bond, and of a notice to withhold, cause to be given to the owner or reputed owner, to the original contractor, or reputed contractor, and to the construction lender, if any, or to the reputed construction lender, if any, a written preliminary notice as prescribed by this section.

(b) Except the contractor, or one performing actual labor for wages as described in subdivision (a) of Section 3089, or a person or entity to whom a portion of a laborer's compensation is paid as described in subdivision (b) of Section 3089, all persons who have a direct contract with the owner and who furnish labor, service, equipment, or material for which a lien or payment bond otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, shall, as a necessary prerequisite to the validity of any claim of lien, claim on a payment bond, and of a notice to withhold, cause to be given to the construction lender, if any, or to the reputed construction lender, if any, a written preliminary notice as prescribed by this section.

(c) The preliminary notice referred to in subdivisions (a) and (b) shall contain the following information:

(1) A general description of the labor, service, equipment, or materials furnished, or to be furnished, and an estimate of the total price thereof.

(2) The name and address of the person furnishing that labor, service, equipment, or materials.

(3) The name of the person who contracted for purchase of that labor, service, equipment, or materials.

(4) A description of the jobsite sufficient for identification.

(5) The following statement in boldface type:

NOTICE TO PROPERTY OWNER

If bills are not paid in full for the labor, services, equipment, or materials furnished or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings, of all or part of your property being so improved may be placed against the property even though you have paid your contractor in full. You may wish to protect yourself against this consequence by (1) requiring your contractor to furnish a signed release by the person or firm giving you this notice

before making payment to your contractor, (2) requiring your contractor to furnish a receipt to establish that you paid the contractor in full and recording no later than 30 days from receipt of this preliminary notice an affidavit that you paid the contractor in full, or (3) any other method or device that is appropriate under the circumstances.

(6) If the notice is given by a subcontractor who has failed to pay all compensation due to his or her laborers on the job, the notice shall also contain the identity and address of any laborer and any express trust fund to whom employer payments are due.

If an invoice for materials or certified payroll contains the information required by this section, a copy of the invoice, transmitted in the manner prescribed by this section shall be sufficient notice.

A certificated architect, registered engineer, or licensed land surveyor who has furnished services for the design of the work of improvement and who gives a preliminary notice as provided in this section not later than 20 days after the work of improvement has commenced shall be deemed to have complied with subdivisions (a) and (b) with respect to architectural, engineering, or surveying services furnished, or to be furnished.

(d) The preliminary notice referred to in subdivisions (a) and (b) shall be given not later than 20 days after the claimant has first furnished labor, service, equipment, or materials to the jobsite. If labor, service, equipment, or materials have been furnished to a jobsite by a claimant who did not give a preliminary notice, that claimant shall not be precluded from giving a preliminary notice at any time thereafter. The claimant shall, however, be entitled to record a lien, file a stop notice, and assert a claim against a payment bond only for labor, service, equipment, or material furnished within 20 days prior to the service of the preliminary notice, and at any time thereafter.

(e) Any agreement made or entered into by an owner, whereby the owner agrees to waive the rights or privileges conferred upon the owner by this section shall be void and of no effect.

(f) The notice required under this section may be served as follows:

(1) If the person to be notified resides in this state, by delivering the notice personally, or by leaving it at his or her address of residence or place of business with some person in charge, or by first-class registered or certified mail, postage prepaid, addressed to the person to whom notice is to be given at his or her residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or at an address recorded pursuant to subdivision (j).

(2) If the person to be notified does not reside in this state, by any method enumerated in paragraph (1) of this subdivision. If the

person cannot be served by any of these methods, then notice may be given by first-class certified or registered mail, addressed to the construction lender or to the original contractor.

(3) When service is made by first-class certified or registered mail, service is complete at the time of the deposit of that registered or certified mail.

(g) A person required by this section to give notice to the owner, to an original contractor, and to a person to whom a notice to withhold may be given, need give only one notice to the owner, to the original contractor, and to the person to whom a notice to withhold may be given with respect to all materials, service, labor, or equipment he or she furnishes for a work of improvement, that means the entire structure or scheme of improvements as a whole, unless the same is furnished under contracts with more than one subcontractor, in which event, the notice requirements shall be met with respect to materials, services, labor, or equipment furnished to each contractor.

If a notice contains a general description required by subdivision (a) or (b) of the materials, services, labor, or equipment furnished to the date of notice, it is not defective because, after that date, the person giving notice furnishes materials, services, labor, or equipment not within the scope of this general description.

(h) If the contract price to be paid to any subcontractor on a particular work of improvement exceeds four hundred dollars ($400), the failure of that contractor, licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, to give the notice provided for in this section, constitutes grounds for disciplinary action by the Registrar of Contractors.

If the notice is required to contain the information set forth in paragraph (6) of subdivision (c), a failure to give the notice, including that information, that results in the filing of a lien, claim on a payment bond, or the delivery of a stop notice by the express trust fund to which the obligation is owing constitutes grounds for disciplinary action by the Registrar of Contractors against the subcontractor if the amount due the trust fund is not paid.

(i) Every city, county, city and county, or other governmental authority issuing building permits shall, in its application form for a building permit, provide space and a designation for the applicant to enter the name, branch, designation, if any, and address of the construction lender and shall keep the information on file open for public inspection during the regular business hours of the authority.

If there is no known construction lender, that fact shall be noted in the designated space. Any failure to indicate the name and address of the construction lender on the application, however, shall not relieve any person from the obligation to give to the construction lender the notice required by this section.

(j) A mortgage, deed of trust, or other instrument securing a loan, any of the proceeds of which may be used for the purpose of constructing improvements on real property, shall bear the designation "Construction Trust Deed" prominently on its face and shall state all of the following: (1) the name and address of the lender, and the name and address of the owner of the real property described in the instrument, and (2) a legal description of the real property which secures the loan and, if known, the street address of the property. The failure to be so designated or to state any of the information required by this subdivision shall not affect the validity of the mortgage, deed of trust, or other instrument.

Failure to provide this information on this instrument when recorded shall not relieve persons required to give preliminary notice under this section from that duty.

The county recorder of the county in which the instrument is recorded shall indicate in the general index of the official records of the county that the instrument secures a construction loan.

(k) Every contractor and subcontractor employing laborers as described in subdivision (a) of Section 3089 who has failed to pay those laborers their full compensation when it became due, including any employer payments described in Section 1773.1 of the Labor Code and regulations adopted thereunder shall, without regard to whether the work was performed on a public or private work, cause to be given to those laborers, their bargaining representatives, if any, and to the construction lender, if any, or to the reputed construction lender, if any, not later than the date the compensation became delinquent, a written notice containing all of the following:

(1) The name of the owner and the contractor.

(2) A description of the jobsite sufficient for identification.

(3) The identity and address of any express trust fund described in Section 3111 to which employer payments are due.

(4) The total number of straight time and overtime hours on each job.

(5) The amount then past due and owing.

Failure to give this notice shall constitute grounds for disciplinary action by the Registrar of Contractors.

(*l*) Every written contract entered into between a property owner and an original contractor shall provide space for the owner to enter his or her name and address of residence; and place of business if any. The original contractor shall make available the name and address of residence of the owner to any person seeking to serve the notice specified in subdivision (c).

(m) Every written contract entered into between a property owner and an original contractor, except home improvement contracts and swimming pool contracts subject to Article 10 (commencing with Section 7150) of Chapter 9 of Division 3 of the Business and Professions Code, shall provide space for the owner to enter the name and address of the construction lender or lenders.

The original contractor shall make available the name and address of the construction lender or lenders to any person seeking to serve the notice specified in subdivision (c). Every contract entered into between an original contractor and subcontractor, and between subcontractors, shall provide a space for the name and address of the owner, original contractor, and any construction lender.

(n) Where one or more construction loans are obtained after commencement of construction, the property owner shall provide the name and address of the construction lender or lenders to each person who has given the property owner the notice specified in subdivision (c).

(o) (1) Each person who has served a preliminary 20-day notice pursuant to subdivision (f) may file the preliminary 20-day notice with the county recorder in the county in which any portion of the property is located. A preliminary 20-day notice filed pursuant to this section shall contain all of the following:

(A) The name and address of the person furnishing the labor, service, equipment, or materials.

(B) The name of the person who contracted for purchase of the labor, service, equipment, or materials.

(C) The common street address of the jobsite.

(2) Upon the acceptance for recording of a notice of completion or notice of cessation the county recorder shall mail to those persons who have filed a preliminary 20-day notice, notification that a notice of completion or notice of cessation has been recorded on the property, and shall affix the date that the notice of completion or notice of cessation was recorded with the county recorder.

(3) The failure of the county recorder to mail the notification to the person who filed a preliminary 20-day notice, or the failure of those persons to receive the notification or to receive complete notification, shall not affect the period within which a claim of lien is required to be recorded. However, the county recorder shall make a good faith effort to mail notification to those persons who have filed the preliminary 20-day notice under this section and to do so within five days after the recording of a notice of completion or notice of cessation.

(4) This new function of the county recorder shall not become operative until July 1, 1988. The county recorder may cause to be destroyed all documents filed pursuant to this section, two years after the date of filing.

(5) The preliminary 20-day notice which a person may file pursuant to this subdivision is for the limited purpose of facilitating the mailing of notice by the county recorder of recorded notices of completion and notices of cessation. The notice which is filed is not a recordable document and shall not be entered into those official records of the county which by law impart constructive notice. Notwithstanding any other provision of law, the index maintained by the recorder of filed preliminary 20-day notices shall be separate and

distinct from those indexes maintained by the county recorder of those official records of the county which by law impart constructive notice. The filing of a preliminary 20-day notice with the county recorder does not give rise to any actual or constructive notice with respect to any party of the existence or contents of a filed preliminary 20-day notice nor to any duty of inquiry on the part of any party as to the existence or contents of that notice.

(p) The change made to the statement described in subdivision (c) by Chapter 974 of the Statutes of 1994 shall have no effect upon the validity of any notice that otherwise meets the requirements of this section. The failure to provide, pursuant to Chapter 974 of the Statutes of 1994, a written preliminary notice to a subcontractor with whom the claimant has contracted shall not affect the validity of any preliminary notice provided pursuant to this section.

(q) A claimant, as defined in Section 3155, who provides a preliminary notice to an owner, as defined in Section 3155, shall also provide the owner with an affidavit form and notice of rights, made available pursuant to Section 3155.15.

SEC. 6. Section 3098 of the Civil Code is amended to read:

3098. "Preliminary 20-day notice (public work)" means a written notice from a claimant that was given prior to the assertion of a claim against a payment bond, or the filing of a stop notice on public work, and is required to be given under the following circumstances:

(a) In any case in which the law of this state affords a right to a person furnishing labor or materials for a public work who has not been paid therefor to assert a claim against a payment bond, or to file a stop notice with the public agency concerned, and thereby cause the withholding of payment from the contractor for the public work, any person that has no direct contractual relationship with the contractor, other than a person who performed actual labor for wages or an express trust fund described in Section 3111, may file the preliminary notice, but no payment shall be withheld from the contractor pursuant to that notice unless the person has caused written notice to be given to the contractor, and the public agency concerned, not later than 20 days after the claimant has first furnished labor, services, equipment, or materials to the jobsite, stating with substantial accuracy a general description of labor, service, equipment, or materials furnished or to be furnished, and the name of the party to whom the same was furnished. This notice shall be served by mailing the same by first-class mail, registered mail, or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business, or his or her residence, or by personal service. In case of any public works constructed by the Department of Public Works or the Department of General Services of the state, such notice shall be served by mailing in the same manner as above, addressed to the office of the disbursing officer of the department constructing the work, or by personal service upon the officer. When service is by

registered or certified mail, service is complete at the time of the deposit of the registered or certified mail.

(b) Where the contract price to be paid to any subcontractor on a particular work of improvement exceeds four hundred dollars ($400), the failure of that contractor, licensed under Chapter 9, (commencing with Section 7000) of Division 3 of the Business and Professions Code, to give the notice provided for in this section, constitutes grounds for disciplinary action by the Registrar of Contractors.

(c) The notice requirements of this section shall not apply to a laborer described in Section 3089 or to an express trust fund described in Section 3111.

(d) If labor, service, equipment, or materials have been furnished to a jobsite by a claimant who did not give a preliminary notice pursuant to subdivision (a), that claimant shall not be precluded from giving a preliminary notice at any time thereafter. The claimant shall, however, be entitled to assert a claim against a payment bond and file a stop notice only for labor, service, equipment, or material furnished within 20 days prior to the service of the preliminary notice, and at any time thereafter.

(e) The failure to provide, pursuant to Chapter 974 of the Statutes of 1994, a written preliminary notice to a subcontractor with whom the claimant has contracted shall not affect the validity of any preliminary notice provided pursuant to this section.

SEC. 7. Section 3111 of the Civil Code is amended to read:

3111. For the purposes of this chapter, an express trust fund to which a portion of a laborer's total compensation is to be paid pursuant to an applicable employment agreement or a collective bargaining agreement for the provision of benefits, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations thereunder, shall be entitled to assert the same rights and claims as laborers performing labor upon, or bestowing skill or other necessary services on, a work of improvement, to the extent of the compensation agreed to be paid to that express trust fund for labor on that improvement only.

SEC. 8. Section 3111.5 of the Civil Code is repealed.

SEC. 9. The Legislature finds and declares that the purpose of this act is to restore the protection created by the mechanic's lien law adopted at the first legislative session of this state, refined and expanded over a century and a half, for the just pay due to workers on construction jobs, without discrimination as to the manner in which the pay is allocated, whether union or nonunion, in cash or a combination of cash and benefits. The intent of the Legislature in enacting this act is to clarify that the protections offered in this title are meant to cover the entire compensation package of employees,

and not to single out or treat differently any particular form of compensation.

CHAPTER 796

An act to amend Sections 10089.70 and 10089.84 of the Insurance Code, and to amend Section 3 of Chapter 899 of the Statutes of 1995, relating to earthquake insurance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 10089.70 of the Insurance Code is amended to read:

10089.70. The department shall establish a program for the mediation of the disputes between insured complainants and insurers arising out of the Northridge Earthquake of 1994 or any subsequent earthquake. The program shall apply only to personal lines of insurance related to residential coverage. The goal of the program shall be to favorably resolve a statistically significant number of disputes sent to mediation under the program. This chapter does not apply to any dispute that turns on a question of major insurance coverage or a purely legal interpretation, or disputes involving the actions of an agent or broker in which the insurer is not alleged to have been responsible for the conduct, or any complaint the commissioner finds to be frivolous, or any dispute in which a party is alleged to have committed fraud.

SEC. 2. Section 10089.84 of the Insurance Code is amended to read:

10089.84. This chapter shall remain in effect 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. Any case referred to mediation by the department prior to January 1, 2005, shall be mediated under this chapter whether or not the mediation has been completed prior to January 1, 2005. No later than August 1, 2004, the commissioner shall report to the Governor and the Legislature on whether the pilot program should be extended, expanded, terminated, or otherwise modified and shall include specific findings regarding the use of the program by insureds and insurers.

SEC. 3. Section 3 of Chapter 899 of the Statutes of 1995 is amended to read:

Sec. 3. The sum of four million four hundred thousand dollars ($4,400,000) is appropriated from the California Residential

Earthquake Recovery Fund to the Department of Insurance for the program established pursuant to this act. During the second half of the 1995–96 fiscal year, the Department of Insurance may use up to one hundred fifty-nine thousand dollars ($159,000) for costs of initial implementation and administration of the program. During the 1996–97 and 1997–98 fiscal years, no more than two hundred thousand dollars ($200,000) per fiscal year may be used by the department to administer this program. Thereafter, no more than two hundred sixty-five thousand dollars ($265,000) per fiscal year may be used by the department to administer the program.

Money appropriated by this section shall be available for expenditure until July 1, 2003. On and after that date, the program established by Chapter 899 of the Statutes of 1995 shall no longer be operative.

SEC. 4. The sum of three million four hundred thousand dollars ($3,400,000) is appropriated from the California Residential Earthquake Recovery Fund to the Department of Insurance for the program established pursuant to Chapter 899 of the Statutes of 1995. Money appropriated by this section shall be available for expenditure until July 1, 2003.

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 facilitate the issuance of grants and loans to provide protection to homeowners from earthquake loss and injury through retrofitting of homes in areas with a high risk of earthquake, and to continue an earthquake mediation program, it is necessary that this act take effect immediately.

CHAPTER 797

An act to amend Section 12960 of, and to add Section 12928 to, the Government Code, relating to discrimination.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 12928 is added to the Government Code, to read:

12928. Notwithstanding any other provision of this part, there is a rebuttable presumption that "employer," as defined by subdivision (d) of Section 12926 and by paragraph (2) of subdivision (d) of Section 12926, includes any person or entity identified as the

employer on the employee's Federal Form W-2 (Wage and Tax Statement).

SEC. 2. Section 12960 of the Government Code is amended to read:

12960. The provisions of this article govern the procedure for the prevention and elimination of practices made unlawful pursuant to Article 1 (commencing with Section 12940) of Chapter 6.

Any person claiming to be aggrieved by an alleged unlawful practice may file with the department a verified complaint in writing that shall state the name and address of the person, employer, labor organization, or employment agency alleged to have committed the unlawful practice complained of, and that shall set forth the particulars thereof and contain other information as may be required by the department. The director or his or her authorized representative may in like manner, on his or her own motion, make, sign, and file a complaint. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this part may file with the department a verified complaint asking for assistance by conciliation or other remedial action.

No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice or refusal to cooperate occurred, except that this period may be extended as follows: (a) for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by an unlawful practice first obtained knowledge of the facts of the alleged unlawful practice after the expiration of one year from the date of their occurrence, or (b) for not to exceed one year following a rebutted presumption of the identity of the person's employer under Section 12928, in order to allow a person allegedly aggrieved by an unlawful practice to make a substitute identification of the actual employer.

CHAPTER 798

An act to add Article 2.8 (commencing with Section 69.5) to Chapter 2 of Division 1 of the Harbors and Navigation Code, relating to coastal resources.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 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 state's beaches provide California with an enriched quality of life, worldwide recognition, and unparalleled tourist opportunities for economic enhancement.

(b) The state's beaches are California's most popular recreational destination with over 550 million visitors in 1995, 85 percent of whom were noncoastal residents.

(c) Tourism is the third largest industry in the state; the state's beaches provide the attraction and recreational infrastructure that drives a major portion of that industry.

(d) Beach-induced recreation and tourism produce over ten billion six hundred million dollars ($10,600,000,000) in direct spending, seventeen billion dollars ($17,000,000,000) in indirect and induced spending, support over 500,000 jobs, and generate over one billion dollars ($1,000,000,000) in state taxes.

(e) Many state beaches are in an advanced state of erosion and are disappearing because of human-induced impacts produced by inland development and watershed modifications, such as concrete channels, flood control structures, and water supply dams. The health of the state's beaches relies upon a steady flow of sand from watersheds via rivers and streams that are now greatly modified and dammed.

(f) The state's beaches provide a natural habitat for many species, some of which are on the threatened or endangered list, such as the least tern and the snowy plover.

(g) Beaches provide exceptional, low-cost recreational opportunities for all social-economic levels especially in densely populated areas that possess limited water recreation opportunities.

(h) A dedicated state-funding source will greatly enhance our ability to partner and qualify for federal matching funds through the United States Army Corps of Engineers' Shore Protection Program.

(i) The Public Research Institute at San Francisco State University has studied beach nourishment needs along the California coast and found a statewide need for one hundred thirty-two million dollars ($132,000,000) in one-time project costs with annualized maintenance costs of seventeen million six hundred thousand dollars ($17,600,000).

SEC. 2. Article 2.8 (commencing with Section 69.5) is added to Chapter 2 of Division 1 of the Harbors and Navigation Code, to read:

Article 2.8. California Public Beach Restoration Act

69.5. This chapter shall be known, and may be cited, as the California Public Beach Restoration Act.

69.6. (a) The California Public Beach Restoration Program is hereby established, to be administered by the department for all of the following purposes:

(1) The restoration, enhancement, and nourishment of public beaches, as determined to be necessary by the department, through the cost-effective engineered placement of sand on the beach or in the nearshore environment.

(2) The planning, design, and permitting of the beach restoration, nourishment, or enhancement projects specified in paragraph (1), which shall not exceed 15 percent of the total project cost.

(3) The preparation of studies to inventory, characterize, and assess the physical and biological resources of the ocean, and nearshore, shoreline, and inland areas that are determined by the department to be necessary to construct the projects specified in paragraph (1) that are environmentally and economically sound. The cost of the studies shall not exceed 5 percent of the annual program funding.

(4) The funding of 100 percent of the nonfederal project construction cost for restoration, nourishment, or enhancement of coastal state parks and state beaches with placement of sand on the beach or in the nearshore.

(5) The funding of 85 percent of the nonfederal project cost for restoration, nourishment, or enhancement of nonstate public beaches with placement of sand on the beach or in the nearshore, with a 15 percent match from the local sponsors, provided as funds or in-kind services.

(6) The active pursuit and promotion of federal and local partnerships to cost-share beach restoration, nourishment, or enhancement projects specified in paragraph (1) that have significant state benefits.

(b) Prior to funding any project under this section, the department shall develop guidelines that include application requirements and criteria for evaluating a project. The guidelines shall be consistent with the Resources Agency's policies for shoreline erosion protection. Only beaches that are in public ownership and that are open and accessible to the public are eligible for funding under this section.

69.8. Notwithstanding Section 7550.5 of the Government Code, the department, and the State Coastal Conservancy, not later than January 1, 2002, shall jointly prepare and submit to the Legislature a report that does all of the following:

(a) Details the restoration, nourishment, and enhancement activities undertaken through this program.

(b) Discusses and evaluates the need for continued public beach restoration projects.

(c) Reports on the effectiveness of the program in addressing that need.

(d) Discusses ways to increase natural sediment supply in order to decrease the need to nourish the state's beaches, including, but not limited to, an analysis of specific locations where structures might be removed or modified.

69.9. (a) The Public Beach Restoration Fund is hereby created in the State Treasury. The moneys in the fund shall be available for expenditure by the department only for the purposes of the

California Public Beach Restoration Program established pursuant to this article.

(b) Of the moneys in the fund, 60 percent shall be available for allocation by the department to projects south of the point at which the Pacific Ocean meets the border between the County of San Luis Obispo and the County of Monterey and 40 percent shall be available for allocation to projects located north of that point.

SEC. 3. This act shall become operative only to the extent that funds are appropriated in the annual Budget Act for the purposes of this act.

CHAPTER 799

An act to add Section 6010.30 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 6010.30 is added to the Revenue and Taxation Code, to read:

6010.30. (a) "Sale" and "purchase," for the purpose of this part, do not include the transfer of original drawings, sketches, illustrations, or paintings by an artist or designer at a social gathering for entertainment purposes, if all of the following requirements are met:

(1) Substantially all of the drawings, sketches, illustrations, or paintings are delivered by the artist or designer to a person or persons other than the purchaser.

(2) Substantially all of the drawings, sketches, illustrations, or paintings are received by a person or persons, other than the purchaser, at no cost to the person or persons who become the owner of the drawings, sketches, illustrations, or paintings.

(3) The charge for the drawings, sketches, illustrations, or paintings is based on a preset fee.

(4) The fee charged for the drawings, sketches, illustrations, or paintings is contingent upon a minimum number of at least three drawings, sketches, illustrations, or paintings to be produced by the artist or designer at the social gathering.

(b) For purposes of this section, "substantially all" means 80 percent or more.

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 800

An act to amend Sections 21251.13, 21363.5, 21541, 21546, 21548, 21551, 21571, 21572, 21573, 21574, 21624, 21629, 21630, and 21635 of, and to repeal Section 21550 of, the Government Code, and to amend Item 9650-001-0001 of Section 2.0 of, and to amend Section 3.60 of, the Budget Act of 1999, relating to the Public Employees' Retirement System.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 21251.13, of the Government Code as added by Senate Bill 400 of the 1999–2000 Regular Session, is amended to read:

21251.13. (a) Notwithstanding any other provision of law, Sections 21070.5, 21070.6, 21073.1, 21073.7, 21354.1, 21362.2, 21363.1, and 21369.1 and the amendments to Sections 21070, 21071, 21072, 21073, 21073.5, and 21353.5, enacted during the first year of the 1999–2000 Regular Session:

(1) Shall not become operative unless the board adopts a resolution that does both of the following: (A) employs, for the June 30, 1998, valuation, 95 percent of the market value of assets of the state employer as the actuarial value of the assets; and (B) amortizes the June 30, 1998, excess assets over a period of 20 years, beginning July 1, 1999.

(2) Shall not apply to a state employee, as defined in subdivision (c) of Section 3513, in a bargaining unit unless and until incorporated in a memorandum of understanding, pursuant to Section 3517.5, applicable to that bargaining unit.

(3) Shall not apply to excluded employees, as defined in Section 3527, unless the Department of Personnel Administration has approved the application of those provisions to those employees. Notwithstanding any provision of law to the contrary, any approval by the Department of Personnel Administration for the application of these provisions to those excluded employees is irrevocable.

(b) Notwithstanding anything in a memorandum of understanding to the contrary, (1) the benefits provided under the provisions of those sections described in subdivision (a), as added or

amended during the first year of the 1999–2000 Regular Session, shall not terminate upon the expiration or termination of the memorandum of understanding, and (2) the only conditions to the operation of the provisions of those sections described in subdivision (a), as added or amended during the first year of the 1999–2000 Regular Session, are contained in this section.

(c) Upon request by the state employer or other entity, or on its own volition, the board may change the amortization period, or take any other action the board deems necessary or appropriate, to mitigate the impact of unforeseen factors that may cause an increase in the employer contribution by the state. Nothing in this section shall be construed to limit the board's authority under Section 17 of Article 16 of the California Constitution.

SEC. 1.3. Section 21363.5 of the Government Code, as amended by Senate Bill 400 of the 1999–2000 Regular Session, is amended to read:

21363.5. (a) Notwithstanding Section 21363 or 21363.1, the limitation on the service retirement benefit shall be 85 percent for state peace officer/firefighter members in State Bargaining Units 6 and 8 who retire on and after January 1, 1999. This provision may also be applied to state peace officer/firefighter members in related supervisory or confidential positions, provided the Department of Personnel Administration has approved this inclusion in writing to the board.

SEC. 1.6. Section 21541 of the Government Code is amended to read:

21541. The special death benefit consists of the following:

(a) An amount equal to and derived from the same source as the basic death benefit exclusive of the contributions from which the annuity provided under subdivision (d) is paid.

(b) An amount sufficient, when added to the amount provided under subdivision (a), to provide, when applied according to tables adopted by the board, a monthly death allowance equal to one-half of his or her final compensation in the membership category applicable to him or her at the time of the injury or the onset of the disease causing death, payable to the surviving spouse to whom he or she was married either continuously for at least one year prior to death, or prior to sustaining the injury or disease resulting in death, as long as the surviving spouse lives; or, if there is no surviving spouse or if the spouse dies before all children of the deceased member attain age 22, to his or her children under 22 collectively until every child shall have died, married, or attained age 22. However, no child shall receive any part of the allowance after marrying or attaining age 22.

(c) During the lifetime of the surviving spouse, an additional percentage of the death benefit allowed by this section, exclusive of the annuity under subdivision (d), shall be paid to the spouse of a member who is killed in the performance of his or her duty or who

dies as a result of an accident or an injury caused by external violence or physical force, incurred in the performance of his or her duty, for each of his or her children during the lifetime of the child, or until the child marries or reaches the age of 22, as follows: for one child, 25 percent; for two children, 40 percent; and for three or more children, 50 percent.

(d) An annuity that is the actuarial equivalent, assuming monthly payments for life to the surviving spouse, of the deceased's accumulated additional contributions at the date of his or her death, plus his or her accumulated contributions at that date based on compensation earned in any membership category other than the category applicable to him or her at the time of the injury or the onset of the disease causing death.

If the surviving spouse does not have custody of the member's children, the additional amount payable pursuant to this section shall be payable to the person having custody of the children for each child during the lifetime of the child, or until the child marries or reaches the age of 22.

The computation for time prior to entering the membership category applicable to the deceased at the time of the injury or the onset of the disease causing death shall be based on the compensation earnable by him or her in the position first held by him or her in that category.

"Spouse," for purposes of this section, means a wife or husband.

(e) This section shall apply to all contracting agencies and to the employees of all contracting agencies.

Any child whose eligibility for an allowance pursuant to this section, commenced on or after October 1, 1965, shall lose that eligibility effective on the date of his adoption.

SEC. 2. Section 21546 of the Government Code is amended to read:

21546. Upon the death of a member who has attained the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, and who is eligible to retire and in circumstances in which the basic death benefit is payable other than solely that of membership in a county retirement system, or a retirement system maintained by the university, a monthly allowance equal to one-half of and derived from the same source as the unmodified retirement allowance which the member would have been entitled to receive if he or she had retired for service on the date of his or her death shall be payable:

(a) To the member's surviving spouse as long as he or she lives.

(b) To the children under age 18 collectively if there is no surviving spouse or if the surviving spouse dies before all children of the deceased member attain age 18, until every child dies or attains age 18. No child shall receive any allowance after marrying or attaining the age of 18.

Where a member does not have a surviving spouse nor any children under the age of 18 years at the time of death, no allowance shall be payable under this section.

No allowance shall be payable under this section if a special death benefit is payable.

The allowance provided by this section shall be paid in lieu of the basic death benefit but a surviving spouse qualifying for the allowance may elect before the first payment on account of it to receive the basic death benefit in lieu of the allowance.

The allowance provided by this section shall be paid in lieu of the basic death benefit but the guardian of the minor child or children qualifying for the allowance may elect, before the first payment on account of it, to receive the basic death benefit in lieu of the allowance. If an election of the basic death benefit is made, the basic death benefit shall be paid to all the member's surviving children, regardless of age or marital status, in equal shares.

If the total of the payments made are less than the basic death benefit that was otherwise payable on account of the member's death, the amount of the basic death benefit less any payments made pursuant to this section shall be paid in a lump sum as follows:

To the surviving children of the member, share and share alike, or if there are no children, to the estate of the person last entitled to the allowance.

The board shall compute the amount by which benefits paid pursuant to this section exceed the benefits that would otherwise be payable and shall charge any excess against the contributions of the state so that there shall be no increase in contributions of members by reason of benefits paid pursuant to this section. As used in this section, "a surviving spouse" means a spouse who was married to the member for at least one year prior to his or her death, and "child" includes a posthumously born child of the member.

On and after April 1, 1972, this section shall apply to all contracting agencies and to the employees of those agencies with respect to deaths occurring after April 1, 1972, whether or not the agencies have previously elected to be subject to this section.

SEC. 3. Section 21548 of the Government Code is amended to read:

21548. The surviving spouse of a member who has attained the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, and who is eligible to receive an allowance pursuant to Section 21546, shall instead receive an allowance that is equal to the amount that the member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21459. The surviving spouse of a member who has attained the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, and who is eligible to receive a special death benefit in lieu of an allowance

under Section 21546, may elect to instead receive an allowance that is equal to the amount that the member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21459.

The allowance shall be payable as long as the surviving spouse lives. Upon the death of the surviving spouse, the benefit shall be continued to minor children, as defined in Section 6500 of the Family Code, or a lump sum shall be paid as provided under circumstances specified in Section 21546 or in Sections 21541 and 21543, as the case may be.

The allowance provided by this section shall be paid in lieu of the basic death benefit, but the surviving spouse qualifying for the allowance may elect before the first payment on account of it to receive the basic death benefit in lieu of the allowance.

This section shall apply with respect to state members whose death occurs on and after July 1, 1976.

All references in this code to Section 21546 shall be deemed to include this section in the alternative.

This section shall not apply to any contracting agency nor to the employees of any contracting agency unless and until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts, except that an election among the employees is not required, or, in the case of contracts made after January 1, 1985, by express provision in the contract making the contracting agency subject to this section.

SEC. 4. Section 21550 of the Government Code is repealed.

SEC. 5. Section 21551 of the Government Code is amended to read:

21551. Notwithstanding any other provisions of this part, the benefits payable to a surviving spouse pursuant to Sections 21541, 21546, 21547, 21548, and Article 3 (commencing with Section 21570), shall not cease upon remarriage if the remarriage occurs on or after September 19, 1989 for surviving spouses of deceased state members, January 1, 1991, for surviving spouses of deceased school members, upon the date a contracting agency elected to be subject to this section for deceased local members, or January 1, 2000, for spouses of deceased local members where the contracting agency has not elected to be subject to this section. Any surviving spouse who elected the reduction specified in Section 21500 as it read prior to January 1, 2000, shall be restored to the lifetime allowance to which he or she was originally entitled effective September 19, 1989, for state members, January 1, 1991, for school members, upon the date a contracting agency elected to be subject to this section, or January 1, 2000, if the contracting agency has not elected to be subject to this section.

Pursuant to Section 22811.5, the surviving spouse who remarries may not enroll his or her new spouse or stepchildren as family

members under the continued health benefits coverage of the surviving spouse.

Any surviving spouse whose allowance has been discontinued as a result of remarriage prior to the effective date of this section shall have that allowance restored and resumed on January 1, 2000, or the first of the month, following receipt by the board of a written application from the spouse for resumption of the allowance, whichever is later. The amount of the benefits due shall be calculated as though the allowance had never been reduced or discontinued because of remarriage, and shall not be payable for the period between the date of discontinuance because of remarriage and January 1, 2000. The board has no duty to identify, locate, or notify a spouse who previously had his or her allowance discontinued because of remarriage.

SEC. 6. Section 21571 of the Government Code is amended to read:

21571. (a) If the death benefit provided by Section 21532 is payable on account of a member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph 1 of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made, in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of disability that began before and has continued without interruption after attainment of that age.

(2) The guardian or conservator of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid three hundred sixty dollars ($360) if there is one child or four hundred thirty dollars ($430) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these

children were in the care of the surviving spouse, which is in excess of one hundred eighty dollars ($180) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid one hundred eighty dollars ($180) per month.

(B) If there are two children, the children shall be paid three hundred sixty dollars ($360) per month divided equally between them.

(C) If there are three or more children, the children shall be paid four hundred thirty dollars ($430) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness which resulted in death, shall be paid one hundred eighty dollars ($180) per month. No allowance shall be paid under this paragraph, while the surviving spouse is receiving an allowance under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be seventy dollars ($70) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for a 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach age 22, each of the member's dependent parents who has attained or attains the age of 62, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid one hundred eighty dollars ($180) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with him or her in a regular parent-child relationship at the time of his or her death.

(d) The amendments to this section by Chapter 1617 of the Statutes of 1971 shall apply only to 1959 survivor allowances payable April 1, 1972, and thereafter.

(e) This section shall not apply to any member in the employ of an employer not subject to this section on January 1, 1994.

SEC. 7. Section 21572 of the Government Code is amended to read:

21572. (a) In lieu of benefits provided in Section 21571, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made, in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid four hundred fifty dollars ($450) if there is one child or five hundred thirty-eight dollars ($538) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of two hundred twenty-five dollars ($225) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid two hundred twenty-five dollars ($225) per month.

(B) If there are two children, the children shall be paid four hundred fifty dollars ($450) per month divided equally between them.

(C) If there are three or more children, the children shall be paid five hundred thirty-eight dollars ($538) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness which resulted in death, shall be paid two hundred twenty-five dollars ($225) per month. No allowance shall be paid under this paragraph, while the surviving spouse is receiving an allowance under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be eighty-eight dollars ($88) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for a 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach age 22, each of the member's dependent parents who has attained or attains the age of 62, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid two hundred twenty-five dollars ($225) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with him or her in a regular parent-child relationship at the time of his or her death.

(d) This section shall apply to beneficiaries receiving 1959 survivor allowances on July 1, 1975, as well as to beneficiaries with respect to the death of a state member occurring on or after July 1, 1975.

(e) This section shall apply, with respect to benefits payable on and after July 1, 1981, to all members employed by a school employer, and school safety members employed with a school district or community college district as defined in subdivision (i) of Section 20057, except that it shall not apply, without contract amendment, with respect to safety members who became members after July 1, 1981. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of all miscellaneous members employed by a school employer and all safety members who are members on July 1, 1981.

(f) This section shall not apply to any member in the employ of an employer not subject to this section on January 1, 1994.

(g) A contracting agency may, by amending its contract, elect to make this section applicable to local members employed by the agency.

SEC. 7.1. Section 21572 of the Government Code is amended to read:

21572. (a) In lieu of benefits provided in Section 21571, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made, in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of a disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid four hundred fifty dollars ($450) per month if there is one child or five hundred thirty-eight dollars ($538) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of two hundred twenty-five dollars ($225) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid two hundred twenty-five dollars ($225) per month.

(B) If there are two children, the children shall be paid four hundred fifty dollars ($450) per month divided equally between them.

(C) If there are three or more children, the children shall be paid five hundred thirty-eight dollars ($538) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, shall be paid two hundred twenty-five dollars ($225) per month. No allowance shall be paid under this paragraph, while the surviving spouse is receiving an allowance under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be eighty-eight dollars ($88) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for a 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid two hundred twenty-five dollars ($225) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with him or her in a regular parent-child relationship at the time of his or her death.

(d) This section shall apply to beneficiaries receiving 1959 survivor allowances on July 1, 1975, as well as to beneficiaries with respect to the death of a state member occurring on or after July 1, 1975.

(e) This section shall apply, with respect to benefits payable on and after July 1, 1981, to all members employed by a school employer, and school safety members employed with a school district or community college district as defined in subdivision (i) of Section 20057, except that it shall not apply, without contract amendment, with respect to safety members who became members after July 1, 1981. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of all miscellaneous members employed by a school employer and all safety members who are members on July 1, 1981.

(f) This section shall not apply to any member in the employ of an employer not subject to this section on January 1, 1994.

(g) A contracting agency may, by amending its contract, elect to make this section applicable to local members employed by the agency.

(h) On and after January 1, 2000, and until January 1, 2010, all state members covered by this section shall be covered by the benefit

provided under Section 21574.7. On and after January 1, 2010, all state members not covered by Section 21573 or 21574.7 shall be covered by this section.

SEC. 8. Section 21573 of the Government Code is amended to read:

21573. (a) In lieu of benefits provided in Section 21571 or Section 21572, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness which resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid seven hundred dollars ($700) per month if there is one child, or eight hundred forty dollars ($840) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of three hundred fifty dollars ($350) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid three hundred fifty dollars ($350) per month.

(B) If there are two children, the children shall be paid seven hundred dollars ($700) per month divided equally between them.

(C) If there are three or more children, the children shall be paid eight hundred forty dollars ($840) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years, and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness which resulted in death, shall be paid three hundred fifty dollars ($350) per month. No allowance shall be paid under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be one hundred forty dollars ($140) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid three hundred fifty dollars ($350) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time of the death of the member.

(d) This section shall apply to beneficiaries of state members whose death occurred before January 1, 1985. Where a surviving spouse attained age 62 prior to January 1, 1987, entitlement shall exist retroactive to January 1, 1985, or to his or her 62nd birthday, whichever is later. All assets and liabilities of all state agencies and their employees on account of benefits provided to beneficiaries specified in this subdivision shall be pooled into a single account. The board shall transfer from the reserve for 1959 survivor contributions retained in the retirement fund, an amount sufficient to pay the cost of the increased benefits provided by this subdivision for beneficiaries of members who died on or before December 31, 1984.

(e) This section shall not apply to beneficiaries with respect to the death of a state member, except as provided in subdivision (i), occurring on or after January 1, 1985, unless provided for in a memorandum of understanding reached pursuant to Section 3517.5, or authorized by the Director of Personnel Administration for classifications of state employees that are excluded from, or not subject to, collective bargaining. The memorandum of understanding adopting this section shall be controlling without

further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature as provided by law.

(f) This section shall apply, with respect to benefits payable on and after January 1, 1985, to school members and to school safety members, as defined in Section 20444. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of school members employed by a school employer.

(g) This section shall apply to members of a contracting agency that, by, in its original contract, or amending its contract, first elects effective on or after January 1, 1985, to make this article applicable to local members employed by the agency. On and after January 1, 1985, contracting agencies already subject to Section 21571 or Section 21572 may elect by contract amendment to be subject to this section. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency which is subject to this section. Any public agency first contracting with the board on and after January 1, 1994, or any contracting agency amending its contract to remove exclusions of member classifications on or after January 1, 1994, that has not, pursuant to Section 418 of Title 42 of the United States Code, entered into an agreement with the federal government for the coverage of its employees under the federal system, shall be subject to this section.

(h) The rate of contribution of an employer subject to this section shall be figured using the term insurance valuation method. If a contracting agency that is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section has a deficit in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

(i) This section shall not apply to beneficiaries with respect to the death of a state member employed by the California State University occurring on or after January 1, 1988, 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. 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. 8.1. Section 21573 of the Government Code is amended to read:

21573. (a) In lieu of benefits provided in Section 21571 or Section 21572, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid seven hundred dollars ($700) per month if there is one child, or eight hundred forty dollars ($840) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of three hundred fifty dollars ($350) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid three hundred fifty dollars ($350) per month.

(B) If there are two children, the children shall be paid seven hundred dollars ($700) per month divided equally between them.

(C) If there are three or more children, the children shall be paid eight hundred forty dollars ($840) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years, and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, shall be paid three hundred fifty dollars ($350) per month. No allowance shall be paid under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be one hundred forty dollars ($140) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid three hundred fifty dollars ($350) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time of the death of the member.

(d) This section shall apply to beneficiaries of state members whose death occurred before January 1, 1985. Where a surviving spouse attained the age of 62 years prior to January 1, 1987, entitlement shall exist retroactive to January 1, 1985, or to his or her 62nd birthday, whichever is later. All assets and liabilities of all state agencies and their employees on account of benefits provided to beneficiaries specified in this subdivision shall be pooled into a single account. The board shall transfer from the reserve for 1959 survivor contributions retained in the retirement fund, an amount sufficient to pay the cost of the increased benefits provided by this subdivision for beneficiaries of members who died on or before December 31, 1984.

(e) This section shall not apply to beneficiaries with respect to the death of a state member, except as provided in subdivision (i), occurring on or after January 1, 1985, unless provided for in a memorandum of understanding reached pursuant to Section 3517.5, or authorized by the Director of Personnel Administration for classifications of state employees that are excluded from, or not subject to, collective bargaining. The memorandum of understanding adopting this section shall be controlling without

further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature as provided by law.

(f) This section shall apply, with respect to benefits payable on and after January 1, 1985, to school members and to school safety members, as defined in Section 20444. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of school members employed by a school employer.

(g) This section shall apply to members of a contracting agency that, in its original contract or by amending its contract, first elects effective on or after January 1, 1985, to make this article applicable to local members employed by the agency. On and after January 1, 1985, contracting agencies already subject to Section 21571 or Section 21572 may elect by contract amendment to be subject to this section. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section. Any public agency first contracting with the board on and after January 1, 1994, or any contracting agency amending its contract to remove exclusions of member classifications on or after January 1, 1994, that has not, pursuant to Section 418 of Title 42 of the United States Code, entered into an agreement with the federal government for the coverage of its employees under the federal system, shall be subject to this section.

(h) The rate of contribution of an employer subject to this section shall be figured using the term insurance valuation method. If a contracting agency that is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section has a deficit in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

(i) This section shall not apply to beneficiaries with respect to the death of a state member employed by the California State University occurring on or after January 1, 1988, 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. 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.

(j) This section shall not apply to any member in the employ of a contracting agency not subject to this section on and after January 1, 2000.

SEC. 8.2. Section 21573 of the Government Code is amended to read:

21573. (a) In lieu of benefits provided in Section 21571 or Section 21572, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of a disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid seven hundred dollars ($700) per month if there is one child, or eight hundred forty dollars ($840) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of three hundred fifty dollars ($350) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so

incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid three hundred fifty dollars ($350) per month.

(B) If there are two children, the children shall be paid seven hundred dollars ($700) per month divided equally between them.

(C) If there are three or more children, the children shall be paid eight hundred forty dollars ($840) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years, and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, shall be paid three hundred fifty dollars ($350) per month. No allowance shall be paid under this paragraph while the surviving spouse is receiving an allowance under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be one hundred forty dollars ($140) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid three hundred fifty dollars ($350) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time of the death of the member.

(d) This section shall apply to beneficiaries of state members whose death occurred before January 1, 1985. Where a surviving spouse attained the age of 62 years prior to January 1, 1987, entitlement shall exist retroactive to January 1, 1985, or to his or her 62nd birthday, whichever is later. All assets and liabilities of all state agencies and their employees on account of benefits provided to beneficiaries specified in this subdivision shall be pooled into a single account. The board shall transfer from the reserve for 1959 survivor contributions retained in the retirement fund, an amount sufficient to pay the cost of the increased benefits provided by this subdivision for beneficiaries of members who died on or before December 31, 1984.

(e) This section shall not apply to beneficiaries with respect to the death of a state member, except as provided in subdivision (i), occurring on or after January 1, 1985, unless provided for in a memorandum of understanding reached pursuant to Section 3517.5,

or authorized by the Director of Personnel Administration for classifications of state employees that are excluded from, or not subject to, collective bargaining. The memorandum of understanding adopting this section shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature as provided by law.

(f) This section shall apply, with respect to benefits payable on and after January 1, 1985, to school members and to school safety members, as defined in Section 20444. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of school members employed by a school employer.

(g) This section shall apply to members of a contracting agency that, in its original contract or by amending its contract, first elects effective on or after January 1, 1985, to make this article applicable to local members employed by the agency. On and after January 1, 1985, contracting agencies already subject to Section 21571 or Section 21572 may elect by contract amendment to be subject to this section. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section. Any public agency first contracting with the board on and after January 1, 1994, or any contracting agency amending its contract to remove exclusions of member classifications on or after January 1, 1994, that has not, pursuant to Section 418 of Title 42 of the United States Code, entered into an agreement with the federal government for the coverage of its employees under the federal system, shall be subject to this section.

(h) The rate of contribution of an employer subject to this section shall be figured using the term insurance valuation method. If a contracting agency that is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section has a deficit in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

(i) This section shall not apply to beneficiaries with respect to the death of a state member employed by the California State University occurring on or after January 1, 1988, 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. 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.

(j) On and after January 1, 2000, and until January 1, 2010, all state and school members covered by this section shall be covered by the benefit provided under Section 21574.7. On and after January 1, 2010, all state and school members not covered by Section 21572 or 21574.7 shall be covered by this section.

SEC. 8.3. Section 21573 of the Government Code is amended to read:

21573. (a) In lieu of benefits provided in Section 21571 or Section 21572, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of a disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid seven hundred dollars ($700) per month if there is one child, or eight hundred forty dollars ($840) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in

excess of three hundred fifty dollars ($350) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid three hundred fifty dollars ($350) per month.

(B) If there are two children, the children shall be paid seven hundred dollars ($700) per month divided equally between them.

(C) If there are three or more children, the children shall be paid eight hundred forty dollars ($840) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years, and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, shall be paid three hundred fifty dollars ($350) per month. No allowance shall be paid under this paragraph while the surviving spouse is receiving an allowance under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be one hundred forty dollars ($140) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid three hundred fifty dollars ($350) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time of the death of the member.

(d) This section shall apply to beneficiaries of state members whose death occurred before January 1, 1985. Where a surviving spouse attained the age of 62 years prior to January 1, 1987, entitlement shall exist retroactive to January 1, 1985, or to his or her 62nd birthday, whichever is later. All assets and liabilities of all state agencies and their employees on account of benefits provided to beneficiaries specified in this subdivision shall be pooled into a single account. The board shall transfer from the reserve for 1959 survivor contributions retained in the retirement fund, an amount sufficient to pay the cost of the increased benefits provided by this subdivision

for beneficiaries of members who died on or before December 31, 1984.

(e) This section shall not apply to beneficiaries with respect to the death of a state member, except as provided in subdivision (i), occurring on or after January 1, 1985, unless provided for in a memorandum of understanding reached pursuant to Section 3517.5, or authorized by the Director of Personnel Administration for classifications of state employees that are excluded from, or not subject to, collective bargaining. The memorandum of understanding adopting this section shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature as provided by law.

(f) This section shall apply, with respect to benefits payable on and after January 1, 1985, to school members and to school safety members, as defined in Section 20444. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of school members employed by a school employer.

(g) This section shall apply to members of a contracting agency that, in its original contract or by amending its contract, first elects effective on or after January 1, 1985, to make this article applicable to local members employed by the agency. On and after January 1, 1985, contracting agencies already subject to Section 21571 or Section 21572 may elect by contract amendment to be subject to this section. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section. Any public agency first contracting with the board on and after January 1, 1994, or any contracting agency amending its contract to remove exclusions of member classifications on or after January 1, 1994, that has not, pursuant to Section 418 of Title 42 of the United States Code, entered into an agreement with the federal government for the coverage of its employees under the federal system, shall be subject to this section.

(h) The rate of contribution of an employer subject to this section shall be figured using the term insurance valuation method. If a contracting agency that is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section has a deficit in its 1959 survivor benefit account as of the date

the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

(i) This section shall not apply to beneficiaries with respect to the death of a state member employed by the California State University occurring on or after January 1, 1988, 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. 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.

(j) On and after January 1, 2000, and until January 1, 2010, all state and school members covered by this section shall be covered by the benefit provided under Section 21574.7. On and after January 1, 2010, all state and school members not covered by Section 21572 or 21574.7 shall be covered by this section.

(k) This section shall not apply to any member in the employ of a contracting agency not subject to this section on and after January 1, 2000.

SEC. 9. Section 21574 of the Government Code is amended to read:

21574. (a) In lieu of benefits provided in Section 21571, 21572, or 21573, if the death benefit provided by Section 21532 is payable on account of a local member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving spouse of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of disability that began before and has continued without interruption after the attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are 22 years of age or are so incapacitated.

(3) The surviving spouse of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the contracting agency, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid one thousand nine hundred dollars ($1,900) per month if there is one child or two thousand two hundred eighty dollars ($2,280) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of nine hundred fifty dollars ($950) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid nine hundred fifty dollars ($950) per month.

(B) If there are two children, the children shall be paid one thousand nine hundred dollars ($1,900) per month divided equally between them.

(C) If there are three or more children, the children shall be paid two thousand two hundred eighty dollars ($2,280) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 60 years, and who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, shall be paid nine hundred fifty dollars ($950) per month. No allowance shall be paid under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be three hundred eighty dollars ($380) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 60 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid nine hundred fifty dollars ($950) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time for the death of the member.

(d) This section shall only apply to members of a contracting agency, which by amending its contract, first elects effective on or after January 1, 1994, to make this section applicable to local members employed by the agency. On and after January 1, 1994, contracting agencies already subject to Section 21571, 21572, or 21573 may elect by contract amendment to be subject to this section. Notwithstanding Section 21573, a public agency first contracting with the board on and after January 1, 1994, may include this section in its contract. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency which is subject to this section.

(e) The rate of contribution of an employer subject to this section shall be calculated using the term insurance valuation method. If a contracting agency which is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency which is subject to this section has a deficit in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

SEC. 10. Section 21624 of the Government Code is amended to read:

21624. Upon the death of a patrol, state peace officer/firefighter, or state safety member whose retirement for service or disability is effective on or after April 1, 1973, a monthly allowance derived from employer contributions equal to a percentage of the amount of his or her retirement allowance as it was at his or her death based on service credited to him or her as a member subject to this section, but excluding any portion of the retirement allowance derived from additional contributions of the member, shall be paid to the surviving spouse throughout life. The percentage shall be 25 percent for an allowance based on service for which the allowance is reduced because the service was also covered under the federal system and 50 percent for an allowance based on any other service. If there is no surviving spouse, or upon the death of the surviving spouse, the allowance shall be paid collectively to every unmarried child of the deceased member who has not attained age 18, or who is disabled by a condition that disabled that child prior to attaining age 18 and that has continued without interruption after age 18, until the disability ceases. If, at the time of the retired member's death, there is no eligible surviving spouse or children, the allowance shall be paid to a parent, or collectively to parents, of the deceased member

dependent upon him or her for support. If, on the effective date of his or her retirement, the member has no surviving spouse, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

"Surviving spouse," for purposes of service retirements subject to this section, means a husband or wife who was married to the member for a continuous period beginning at least one year prior to his or her retirement and ending on the date of his or her death and, for purposes of disability retirements subject to this section, means a husband or wife who was married to the member on the date of his or her retirement and continuously to the date of his or her death.

SEC. 11. Section 21629 of the Government Code is amended to read:

21629. Upon the death, after the effective date of retirement, of a state miscellaneous member none of whose service rendered in state employment has been included in the federal system and whose retirement is effective on or after July 1, 1974, or of a school member or school safety member none of whose service rendered in school service or school safety service has been included in the federal system and whose retirement is effective on or after July 1, 1983, a monthly allowance derived from employer contributions equal to 50 percent of the amount of his or her retirement allowance as it was at his or her death and based on service credited to him or her as a member subject to this section but excluding any portion of the retirement allowance derived from additional contributions of the member shall be paid to the surviving spouse throughout life. If there is no surviving spouse, or upon the death of the surviving spouse, the allowance shall be paid collectively to every unmarried child of the deceased member who has not attained age 18, or who is disabled by a condition which disabled that child prior to attaining age 18 and which has continued without interruption after age 18, until the disability ceases. If at the time of the retired member's death there is no eligible surviving spouse or children, the allowance shall be paid to a parent, or collectively to parents, of the deceased member dependent upon him or her for support. If on the effective date of retirement there is a person who will be eligible if the person survives, the member's election of an optional settlement other than optional settlement 1 shall apply only to a portion of his or her allowance as provided in Section 21451 with respect to allowances under Section 21624. If on the effective date of his or her retirement the member has no surviving spouse, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

"Surviving spouse," for purposes of service retirement subject to this section, means a husband or wife who was married to the member for a continuous period beginning at least one year prior to his or her retirement and ending on the date of his or her death and, for purposes of disability retirement subject to this section where the

member retired on or after January 1, 1995, means a husband or wife who was married to the member on the date of his or her retirement and continuously to the date of his or her death.

SEC. 12. Section 21630 of the Government Code is amended to read:

21630. Upon death after the effective date of retirement of a state miscellaneous member some of whose service rendered in state employment has been included in the federal system and whose retirement is effective on or after July 1, 1975, or of a school member or school safety member some of whose service rendered in school employment has been included in the federal system and whose retirement is effective on or after July 1, 1983, a monthly allowance, derived from employer contributions, equal to a percentage of the amount of his or her retirement allowance as it was at his or her death based on service credited to him or her as a member subject to this section but excluding any portion of the retirement allowance derived from additional contributions of the member shall be paid to the surviving spouse throughout life. The percentage shall be 25 percent for an allowance based on service that was also covered under the federal system and 50 percent for an allowance based on any other service, except that the percentage shall be 50 percent for the allowance of a member whose service was subject to Section 21076 or 21077 and who had become a member prior to November 1, 1988. If there is no surviving spouse, or upon the death of the surviving spouse, the allowance shall be paid collectively to every unmarried child of the deceased member who has not attained age 18, or who is disabled by a condition that disabled that child prior to attaining age 18 and that has continued without interruption after age 18, until the disability ceases. If at the time of the retired member's death there is no eligible surviving spouse or children, the allowance shall be paid to a parent, or collectively to parents, of the deceased member dependent upon him or her for support. If on the effective date of retirement there is a person who will be eligible if the person survives, the member's election of an optional settlement, other than optional settlement 1, shall apply only to a portion of the allowance as provided in Section 21451 with respect to allowances under Section 21624. If on the effective date of his or her retirement the member has no surviving spouse, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

"Surviving spouse," for purposes of service retirement subject to this section, means a husband or wife who was married to the member for a continuous period beginning at least one year prior to his or her retirement and ending on the date of his or her death and, for purposes of disability retirement subject to this section where the member retired on or after January 1, 1995, means a husband or wife who was married to the member on the date of his or her retirement and continuously to the date of his or her death.

SEC. 13. Section 21635 of the Government Code is amended to read:

21635. Notwithstanding any other provisions of this part, survivor continuance allowances payable to surviving spouses upon death after retirement of a member shall not cease upon remarriage if the remarriage occurs on or after January 1, 1985, in the case of local members of contracting agencies that elected to be subject to this section, or all members on or after January 1, 2000. However, pursuant to Section 22811.5, the surviving spouse may not add the new spouse or stepchildren as family members under the continued health benefits coverage of the surviving spouse. The survivor continuance allowance shall be restored if that allowance has been discontinued upon the spouse's remarriage prior to January 1, 2000.

(a) The allowance shall be resumed on January 1, 2000, or the first of the month, following receipt by the board of a written application from the spouse for resumption of the allowance, whichever is later.

(b) The amount of the benefits due shall be calculated as though the allowance had never been discontinued because of remarriage, and shall not be payable for the period between the date of discontinuance because of remarriage and the effective date of resumption.

(c) The board has no duty to identify, locate, or notify a spouse who previously had his or her allowance discontinued because of remarriage.

SEC. 14. Item 9650-001-0001 of Section 2 of the Budget Act of 1999 (Chapter 50 of the Statutes of 1999) is amended to read:

9650−001−0001—For support of Health and Dental Benefits for Annuitants. For the state's contribution for the cost of a health benefits plan and dental care premiums, for annuitants and other employees, in accordance with Sections 22825.7, 22828, 22829, and 22952 of the Government Code, which cost is not chargeable to any other appropriation	347,322,000
Schedule:	
(a) Health benefit premiums 312,738,000	
(b) Dental care premiums 34,584,000	
Provisions:	
1. The maximum transfer amounts specified in subdivision (b) of Section 26.00 of this act do not apply to this item.	
2. Notwithstanding Section 22819 of the Government Code or any other provision of law, annuitants and their family members who were employed by the California State	

University, and who become eligible for Part A and Part B of Medicare during the 1999-00 fiscal year, shall not be enrolled in a basic health benefits plan during the 1999-00 fiscal year. If the annuitant or family member is enrolled in Part A and Part B of Medicare, he or she may enroll in a supplement to the Medicare plan. This provision does not apply to employees and family members who are specifically excluded from enrollment in a supplement to the Medicare plan by federal law or regulation.

3. The maximum monthly contribution for an annuitant's health benefits plan shall be $181 for asingle enrollee, $344 for an enrollee and one dependent, and $441 for an enrollee and two or more dependents.

SEC. 15. Section 3.60 of the Budget Act of 1999 (Chapter 50 of the Statutes of 1999) is amended to read:

SEC. 3.60. (a) Notwithstanding any other provision of law, the employers' retirement contributions for the 1999–00 fiscal year that are chargeable to an appropriation made in this act, with respect to each state officer and employee who is a member of the Public Employees' Retirement System and who is in that employment or office, including university members as provided by Section 20751 of the Government Code, shall be the percentage of salaries and wages by state member category as follows:

Miscellaneous, First Tier	1.491%
Miscellaneous, Second Tier	0.000%
State Industrial	0.026%
State Safety	7.487%
Highway Patrol	13.345%
Peace Officer/Firefighter	0.000%

The Department of Finance may adjust amounts in any appropriation item, or in any category thereof, in this act as a result of changes from amounts budgeted for employer contribution for 1999–00 fiscal year retirement benefits.

(b) Notwithstanding any other provisions of law, the Department of Finance shall require retirement contributions computed pursuant to subdivision (a) to be offset by the Controller with surplus funds in the Public Employees' Retirement Fund, employer surplus asset accounts.

(c) Notwithstanding any other provision of law, for purposes of calculating the "appropriations subject to limitation" as defined in Section 8 of Article XIII B of the California Constitution, the

appropriations in this act shall be deemed to be the amounts remaining after the reductions required by subdivisions (a) and (b) are made.

SEC. 16. Section 7.1 of this bill incorporates amendments to Section 21572 of the Government Code proposed by both this bill and SB 400. 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 21572 of the Government Code, and (3) this bill is enacted after SB 400, in which case Section 7 of this bill shall not become operative.

SEC. 17. (a) Section 8.1 of this bill incorporates amendments to Section 21573 of the Government Code proposed by both this bill and AB 99. 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 21573 of the Government Code, and (3) SB 400 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 99, in which case Sections 8, 8.2, and 8.3 of this bill shall not become operative.

(b) Section 8.2 of this bill incorporates amendments to Section 21573 of the Government Code proposed by both this bill and SB 400. 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 21573 of the Government Code, (3) AB 99 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 400 in which case Sections 8, 8.1, and 8.3 of this bill shall not become operative.

(c) Section 8.3 of this bill incorporates amendments to Section 21573 of the Government Code proposed by this bill, AB 99, and SB 400. 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 21573 of the Government Code, and (3) this bill is enacted after AB 99 and SB 400, in which case Sections 8, 8.1, and 8.2 of this bill shall not become operative.

SEC. 18. Sections 1, 1.3, and 15 of this act shall become operative only if Senate Bill 400 of the 1999–2000 Regular Session is enacted and takes effect on or before January 1, 2000.

CHAPTER 801

An act to amend Sections 21573, 21574, and 21581 of, and to add Section 21574.5 to, the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 21573 of the Government Code is amended to read:

21573. (a) In lieu of benefits provided in Section 21571 or Section 21572, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid seven hundred dollars ($700) per month if there is one child, or eight hundred forty dollars ($840) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of three hundred fifty dollars ($350) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies or remarries, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid three hundred fifty dollars ($350) per month.

(B) If there are two children, the children shall be paid seven hundred dollars ($700) per month divided equally between them.

(C) If there are three or more children, the children shall be paid eight hundred forty dollars ($840) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years, and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death and has not remarried subsequent to the member's death, shall be paid three hundred fifty dollars ($350) per month. No allowance shall be paid under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be one hundred forty dollars ($140) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies or remarries and there is no surviving child, or if the surviving spouse dies or remarries and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid three hundred fifty dollars ($350) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time of the death of the member.

(d) This section shall apply to beneficiaries of state members whose death occurred before January 1, 1985. Where a surviving spouse attained the age of 62 years prior to January 1, 1987, entitlement shall exist retroactive to January 1, 1985, or to his or her 62nd birthday, whichever is later. All assets and liabilities of all state agencies and their employees on account of benefits provided to beneficiaries specified in this subdivision shall be pooled into a single account. The board shall transfer from the reserve for 1959 survivor contributions retained in the retirement fund an amount sufficient to pay the cost of the increased benefits provided by this subdivision for beneficiaries of members who died on or before December 31, 1984.

(e) This section shall not apply to beneficiaries with respect to the death of a state member, except as provided in subdivision (i), occurring on or after January 1, 1985, unless provided for in a memorandum of understanding reached pursuant to Section 3517.5, or authorized by the Director of Personnel Administration for classifications of state employees that are excluded from, or not subject to, collective bargaining. The memorandum of understanding adopting this section shall be controlling without

further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature as provided by law.

(f) This section shall apply, with respect to benefits payable on and after January 1, 1985, to school members and to school safety members, as defined in Section 20444. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of school members employed by a school employer.

(g) This section shall apply to members of a contracting agency that, in its original contract or by amending its contract, first elects effective on or after January 1, 1985, to make this article applicable to local members employed by the agency. On and after January 1, 1985, contracting agencies already subject to Section 21571 or Section 21572 may elect by contract amendment to be subject to this section. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section. Any public agency first contracting with the board on and after January 1, 1994, or any contracting agency amending its contract to remove exclusions of member classifications on or after January 1, 1994, that has not, pursuant to Section 418 of Title 42 of the United States Code, entered into an agreement with the federal government for the coverage of its employees under the federal system, shall be subject to this section.

(h) The rate of contribution of an employer subject to this section shall be figured using the term insurance valuation method. If a contracting agency that is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section has a deficit in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

(i) This section shall not apply to beneficiaries with respect to the death of a state member employed by the California State University occurring on or after January 1, 1988, 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. 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.

(j) This section shall not apply to any member in the employ of a contracting agency not subject to this section on and after January 1, 2000.

SEC. 1.1. Section 21573 of the Government Code is amended to read:

21573. (a) In lieu of benefits provided in Section 21571 or Section 21572, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid seven hundred dollars ($700) per month if there is one child, or eight hundred forty dollars ($840) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of three hundred fifty dollars ($350) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so

incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid three hundred fifty dollars ($350) per month.

(B) If there are two children, the children shall be paid seven hundred dollars ($700) per month divided equally between them.

(C) If there are three or more children, the children shall be paid eight hundred forty dollars ($840) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years, and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death , shall be paid three hundred fifty dollars ($350) per month. No allowance shall be paid under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be one hundred forty dollars ($140) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid three hundred fifty dollars ($350) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time of the death of the member.

(d) This section shall apply to beneficiaries of state members whose death occurred before January 1, 1985. Where a surviving spouse attained the age of 62 years prior to January 1, 1987, entitlement shall exist retroactive to January 1, 1985, or to his or her 62nd birthday, whichever is later. All assets and liabilities of all state agencies and their employees on account of benefits provided to beneficiaries specified in this subdivision shall be pooled into a single account. The board shall transfer from the reserve for 1959 survivor contributions retained in the retirement fund, an amount sufficient to pay the cost of the increased benefits provided by this subdivision for beneficiaries of members who died on or before December 31, 1984.

(e) This section shall not apply to beneficiaries with respect to the death of a state member, except as provided in subdivision (i), occurring on or after January 1, 1985, unless provided for in a memorandum of understanding reached pursuant to Section 3517.5, or authorized by the Director of Personnel Administration for classifications of state employees that are excluded from, or not

subject to, collective bargaining. The memorandum of understanding adopting this section shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature as provided by law.

(f) This section shall apply, with respect to benefits payable on and after January 1, 1985, to school members and to school safety members, as defined in Section 20444. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of school members employed by a school employer.

(g) This section shall apply to members of a contracting agency that, in its original contract or by amending its contract, first elects effective on or after January 1, 1985, to make this article applicable to local members employed by the agency. On and after January 1, 1985, contracting agencies already subject to Section 21571 or Section 21572 may elect by contract amendment to be subject to this section. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section. Any public agency first contracting with the board on and after January 1, 1994, or any contracting agency amending its contract to remove exclusions of member classifications on or after January 1, 1994, that has not, pursuant to Section 418 of Title 42 of the United States Code, entered into an agreement with the federal government for the coverage of its employees under the federal system, shall be subject to this section.

(h) The rate of contribution of an employer subject to this section shall be figured using the term insurance valuation method. If a contracting agency that is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section has a deficit in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

(i) This section shall not apply to beneficiaries with respect to the death of a state member employed by the California State University occurring on or after January 1, 1988, 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. 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.

(j) This section shall not apply to any member in the employ of a contracting agency not subject to this section on and after January 1, 2000.

SEC. 1.2. Section 21573 of the Government Code is amended to read:

21573. (a) In lieu of benefits provided in Section 21571 or Section 21572, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of a disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid seven hundred dollars ($700) per month if there is one child, or eight hundred forty dollars ($840) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of three hundred fifty dollars ($350) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies or remarries, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid three hundred fifty dollars ($350) per month.

(B) If there are two children, the children shall be paid seven hundred dollars ($700) per month divided equally between them.

(C) If there are three or more children, the children shall be paid eight hundred forty dollars ($840) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years, and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death and has not remarried subsequent to the member's death, shall be paid three hundred fifty dollars ($350) per month. No allowance shall be paid under this paragraph while the surviving spouse is receiving an allowance under paragraph (1) or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be one hundred forty dollars ($140) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies or remarries and there is no surviving child, or if the surviving spouse dies or remarries and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid three hundred fifty dollars ($350) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time of the death of the member.

(d) This section shall apply to beneficiaries of state members whose death occurred before January 1, 1985. Where a surviving spouse attained the age of 62 years prior to January 1, 1987, entitlement shall exist retroactive to January 1, 1985, or to his or her 62nd birthday, whichever is later. All assets and liabilities of all state agencies and their employees on account of benefits provided to beneficiaries specified in this subdivision shall be pooled into a single account. The board shall transfer from the reserve for 1959 survivor contributions retained in the retirement fund an amount sufficient to pay the cost of the increased benefits provided by this subdivision

for beneficiaries of members who died on or before December 31, 1984.

(e) This section shall not apply to beneficiaries with respect to the death of a state member, except as provided in subdivision (i), occurring on or after January 1, 1985, unless provided for in a memorandum of understanding reached pursuant to Section 3517.5, or authorized by the Director of Personnel Administration for classifications of state employees that are excluded from, or not subject to, collective bargaining. The memorandum of understanding adopting this section shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature as provided by law.

(f) This section shall apply, with respect to benefits payable on and after January 1, 1985, to school members and to school safety members, as defined in Section 20444. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of school members employed by a school employer.

(g) This section shall apply to members of a contracting agency that, in its original contract or by amending its contract, first elects effective on or after January 1, 1985, to make this article applicable to local members employed by the agency. On and after January 1, 1985, contracting agencies already subject to Section 21571 or Section 21572 may elect by contract amendment to be subject to this section. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section. Any public agency first contracting with the board on and after January 1, 1994, or any contracting agency amending its contract to remove exclusions of member classifications on or after January 1, 1994, that has not, pursuant to Section 418 of Title 42 of the United States Code, entered into an agreement with the federal government for the coverage of its employees under the federal system, shall be subject to this section.

(h) The rate of contribution of an employer subject to this section shall be figured using the term insurance valuation method. If a contracting agency that is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section has a deficit in its 1959 survivor benefit account as of the date

the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

(i) This section shall not apply to beneficiaries with respect to the death of a state member employed by the California State University occurring on or after January 1, 1988, 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. 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.

(j) This section shall not apply to any member in the employ of a contracting agency not subject to this section on and after January 1, 2000.

(k) On and after January 1, 2000, and until January 1, 2010, all state and school members covered by this section shall be covered by the benefit provided under Section 21574.7. On and after January 1, 2010, all state and school members not covered by Section 21572 or 21574.7 shall be covered by this section.

SEC. 1.3. Section 21573 of the Government Code is amended to read:

21573. (a) In lieu of benefits provided in Section 21571 or Section 21572, if the death benefit provided by Section 21532 is payable on account of a state member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving wife or surviving husband of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of a disability that began before and has continued without interruption after attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are under 22 years of age or are so incapacitated.

(3) The surviving wife or surviving husband of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the state, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid seven hundred dollars ($700) per month if there is one child, or eight hundred forty dollars ($840) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of three hundred fifty dollars ($350) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies , and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid three hundred fifty dollars ($350) per month.

(B) If there are two children, the children shall be paid seven hundred dollars ($700) per month divided equally between them.

(C) If there are three or more children, the children shall be paid eight hundred forty dollars ($840) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 62 years, and, with respect to that surviving spouse, who was either continuously married to the member for at least one year prior to death, or who was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death , shall be paid three hundred fifty dollars ($350) per month. No allowance shall be paid under this paragraph while the surviving spouse is receiving an allowance under paragraph (1) or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be one hundred forty dollars ($140) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 62 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid three hundred fifty dollars ($350) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time of the death of the member.

(d) This section shall apply to beneficiaries of state members whose death occurred before January 1, 1985. Where a surviving spouse attained the age of 62 years prior to January 1, 1987, entitlement shall exist retroactive to January 1, 1985, or to his or her 62nd birthday, whichever is later. All assets and liabilities of all state agencies and their employees on account of benefits provided to beneficiaries specified in this subdivision shall be pooled into a single account. The board shall transfer from the reserve for 1959 survivor contributions retained in the retirement fund an amount sufficient to pay the cost of the increased benefits provided by this subdivision for beneficiaries of members who died on or before December 31, 1984.

(e) This section shall not apply to beneficiaries with respect to the death of a state member, except as provided in subdivision (i), occurring on or after January 1, 1985, unless provided for in a memorandum of understanding reached pursuant to Section 3517.5, or authorized by the Director of Personnel Administration for classifications of state employees that are excluded from, or not subject to, collective bargaining. The memorandum of understanding adopting this section shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature as provided by law.

(f) This section shall apply, with respect to benefits payable on and after January 1, 1985, to school members and to school safety members, as defined in Section 20444. All assets and liabilities of all school employers, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of school members employed by a school employer.

(g) This section shall apply to members of a contracting agency that, in its original contract or by amending its contract, first elects effective on or after January 1, 1985, to make this article applicable to local members employed by the agency. On and after January 1, 1985, contracting agencies already subject to Section 21571 or Section 21572 may elect by contract amendment to be subject to this section. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section. Any public agency first contracting with the board on and after January 1, 1994, or any contracting agency amending its

contract to remove exclusions of member classifications on or after January 1, 1994, that has not, pursuant to Section 418 of Title 42 of the United States Code, entered into an agreement with the federal government for the coverage of its employees under the federal system, shall be subject to this section.

(h) The rate of contribution of an employer subject to this section shall be figured using the term insurance valuation method. If a contracting agency that is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section has a deficit in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

(i) This section shall not apply to beneficiaries with respect to the death of a state member employed by the California State University occurring on or after January 1, 1988, 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. 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.

(j) This section shall not apply to any member in the employ of a contracting agency not subject to this section on and after January 1, 2000.

(k) On and after January 1, 2000, and until January 1, 2010, all state and school members covered by this section shall be covered by the benefit provided under Section 21574.7. On and after January 1, 2010, all state and school members not covered by Section 21572 or 21574.7 shall be covered by this section.

SEC. 2. Section 21574 of the Government Code is amended to read:

21574. (a) In lieu of benefits provided in Section 21571, 21572, or 21573, if the death benefit provided by Section 21532 is payable on account of a local member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving spouse of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of disability that began before and has continued without interruption after the attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are 22 years of age or are so incapacitated.

(3) The surviving spouse of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the contracting agency, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid one thousand nine hundred dollars ($1,900) per month if there is one child or two thousand two hundred eighty dollars ($2,280) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of nine hundred fifty dollars ($950) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies or remarries, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid nine hundred fifty dollars ($950) per month.

(B) If there are two children, the children shall be paid one thousand nine hundred dollars ($1,900) per month divided equally between them.

(C) If there are three or more children, the children shall be paid two thousand two hundred eighty dollars ($2,280) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 60 years, and who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death and has not remarried subsequent to the member's death, shall be paid nine hundred fifty dollars ($950) per month. No allowance shall be paid under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under

this paragraph shall be three hundred eighty dollars ($380) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies or remarries and there is no surviving child, or if the surviving spouse dies or remarries and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 60 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid nine hundred fifty dollars ($950) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time of the death of the member.

(d) This section shall only apply to members of a contracting agency that, by amending its contract, first elects effective on or after January 1, 1994, to make this section applicable to local members employed by the agency. On and after January 1, 1994, contracting agencies already subject to Section 21571, 21572, or 21573 may elect by contract amendment to be subject to this section. Notwithstanding Section 21573, a public agency first contracting with the board on and after January 1, 1994, may include this section in its contract. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section.

(e) The rate of contribution of an employer subject to this section shall be calculated using the term insurance valuation method. If a contracting agency that is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section has a deficit in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

(f) This section shall not apply to any member in the employ of a contracting agency not subject to this section at the time the single beneficiary benefit level of Section 21574.5 exceeds the single beneficiary benefit level of Section 21574.

SEC. 2.1. Section 21574 of the Government Code is amended to read:

21574. (a) In lieu of benefits provided in Section 21571, 21572, or 21573, if the death benefit provided by Section 21532 is payable on account of a local member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of

subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving spouse of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of disability that began before and has continued without interruption after the attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are 22 years of age or are so incapacitated.

(3) The surviving spouse of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the contracting agency, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid one thousand nine hundred dollars ($1,900) per month if there is one child or two thousand two hundred eighty dollars ($2,280) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of nine hundred fifty dollars ($950) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid nine hundred fifty dollars ($950) per month.

(B) If there are two children, the children shall be paid one thousand nine hundred dollars ($1,900) per month divided equally between them.

(C) If there are three or more children, the children shall be paid two thousand two hundred eighty dollars ($2,280) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 60 years, and who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death , shall be paid nine hundred fifty dollars ($950) per month. No allowance shall be paid under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be three hundred eighty dollars ($380) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 60 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid nine hundred fifty dollars ($950) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time of the death of the member.

(d) This section shall only apply to members of a contracting agency that, by amending its contract, first elects effective on or after January 1, 1994, to make this section applicable to local members employed by the agency. On and after January 1, 1994, contracting agencies already subject to Section 21571, 21572, or 21573 may elect by contract amendment to be subject to this section. Notwithstanding Section 21573, a public agency first contracting with the board on and after January 1, 1994, may include this section in its contract. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section.

(e) The rate of contribution of an employer subject to this section shall be calculated using the term insurance valuation method. If a contracting agency that is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section has a deficit in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

(f) This section shall not apply to any member in the employ of a contracting agency not subject to this section at the time the single beneficiary benefit level of Section 21574.5 exceeds the single beneficiary benefit level of Section 21574.

SEC. 3. Section 21574.5 is added to the Government Code, to read:

21574.5. (a) In lieu of benefits provided in Section 21571, 21572, 21573, or 21574, if the death benefit provided by Section 21532 is payable on account of a local member's death that occurs under circumstances other than those described in subparagraph (F) of paragraph (1) of subdivision (a) of Section 21530, or if an allowance under Section 21546 is payable, the payment pursuant to subdivision (b) shall be made in the following order of priority:

(1) The surviving spouse of the member, who has the care of unmarried children, including stepchildren, of the member who are under 22 years of age, or are incapacitated because of disability that began before and has continued without interruption after the attainment of that age.

(2) The guardian of surviving unmarried children, including stepchildren, of the member who are 22 years of age or are so incapacitated.

(3) The surviving spouse of the member, who does not qualify under paragraph (1).

(4) Each surviving parent of the member.

(b) Regardless of the benefit provided by Section 21532 and of the beneficiary designated by the member under that section, or regardless of the allowance provided under Section 21546, the following applicable 1959 survivor allowance, under the conditions stated and from contributions of the contracting agency, shall be paid:

(1) A surviving spouse who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, and has the care of unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, shall be paid one thousand dollars ($1,000) per month if there is one child or one thousand five hundred dollars ($1,500) per month if there are two or more children. If there also are children who are not in the care of the surviving spouse, the portion of the allowance payable under this paragraph, assuming that these children were in the care of the surviving spouse, that is in excess of five hundred dollars ($500) per month, shall be divided equally among all those children and payments made to the spouse and other children, as the case may be.

(2) If there is no surviving spouse, or if the surviving spouse dies, and if there are unmarried children, including stepchildren, of the deceased member who are under 22 years of age or are so incapacitated, or if there are children not in the care of the spouse, the children shall be paid an allowance as follows:

(A) If there is only one child, the child shall be paid five hundred dollars ($500) per month.

(B) If there are two children, the children shall be paid one thousand dollars ($1,000) per month divided equally between them.

(C) If there are three or more children, the children shall be paid one thousand five hundred dollars ($1,500) per month divided equally among them.

(3) A surviving spouse who has attained or attains the age of 60 years, and who was either continuously married to the member for at least one year prior to death, or was married to the member prior to the occurrence of the injury or onset of the illness that resulted in death, shall be paid five hundred dollars ($500) per month. No allowance shall be paid under paragraph (1), or while an allowance is being paid under subparagraph (C) of paragraph (2). The allowance paid under this paragraph shall be five hundred dollars ($500) per month while an allowance is being paid under subparagraph (B) of paragraph (2).

(4) If there is no surviving spouse or surviving child who qualifies for the 1959 survivor allowance, or if the surviving spouse dies and there is no surviving child, or if the surviving spouse dies and the children die or marry or, if not incapacitated, reach 22 years of age, each of the member's dependent parents who has attained or attains the age of 60 years, and who received at least one-half of his or her support from the member at the time of the member's death, shall be paid five hundred dollars ($500) per month.

(c) "Stepchildren," for purposes of this section, shall include only stepchildren of the member living with the member in a regular parent-child relationship at the time of the death of the member.

(d) This section shall only apply to members of a contracting agency that, by amending its contract, first elects on or after January 1, 2000, to make this section applicable to local members employed by the agency. On and after January 1, 2000, contracting agencies already subject to Section 21571, 21572, or 21573 may elect by contract amendment to be subject to this section. All assets and liabilities of all contracting agencies subject to this section, and their employees, on account of benefits provided under this article shall be pooled into a single account, and a single employer rate shall be established to provide benefits under this section on account of members employed by a contracting agency that is subject to this section.

(e) The rate of contribution of an employer subject to this section shall be calculated using a method determined by the board. If the contracting agency that is subject to this section has a surplus in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, the surplus shall be applied to reduce its rate of contribution. If a contracting agency that is subject to this section has a deficit in its 1959 survivor benefit account as of the date the contracting agency becomes subject to this section, its rate of contribution shall be increased until the deficit is paid.

(f) In each subsequent year following the enactment of this section, the benefits prescribed by this section shall be indexed at a

rate of 2 percent per year for both beneficiaries already receiving the benefit and for potential beneficiaries of members who die in the future.

SEC. 4. Section 21581 of the Government Code is amended to read:

21581. (a) The rate of contribution of a member subject to this article shall include, in addition to his or her normal rate, two dollars ($2) per month or fraction thereof, or ninety-three cents ($0.93) for each biweekly payroll period or fraction thereof, where salaries are paid on that basis. Those contributions shall not become a part of a member's accumulated contributions or be treated or administered as normal contributions and shall not be refundable to a member under any circumstances. Those contributions shall be available only for payment of 1959 survivor allowances.

(b) Notwithstanding subdivision (a), the total required monthly premium for Section 21574.5, as determined by the board, shall be offset by the uniform amortization of surplus assets within this account. If the total monthly premium is equal to, or less than, four dollars ($4), the member contribution portion shall be two dollars ($2) per month and the employer shall pay the difference, if any. If the total monthly premium required exceeds four dollars ($4), the member and the employer shall evenly share the total required monthly premium.

SEC. 4.1. Section 21581 of the Government Code is amended to read:

21581. (a) The rate of contribution of a member subject to this article shall include, in addition to his or her normal rate, two dollars ($2) per month or fraction thereof, or ninety-three cents ($0.93) for each biweekly payroll period or fraction thereof, where salaries are paid on that basis. Those contributions shall not become a part of a member's accumulated contributions or be treated or administered as normal contributions and shall not be refundable to a member under any circumstances. Those contributions shall be available only for payment of 1959 survivor allowances.

(b) Notwithstanding subdivision (a), the total required monthly premium for Section 21574.5, as determined by the board, shall be offset by the uniform amortization of surplus assets within this account. If the total monthly premium is equal to, or less than, four dollars ($4), the member contribution portion shall be two dollars ($2) per month and the employer shall pay the difference, if any. If the total monthly premium required exceeds four dollars ($4), the member and the employer shall evenly share the total required monthly premium.

(c) Notwithstanding subdivision (a), the total monthly premium required for Section 21574.7, as determined by the board, shall be offset by the uniform amortization of surplus assets within this account. Member contributions shall be two dollars ($2) per month until such time as the future required monthly premium exceeds four

dollars ($4), and the employer shall pay the difference between the total required monthly premium and the member's contribution. Once the total required monthly premium exceeds four dollars ($4), the member and the employer shall evenly share the required monthly premium.

SEC. 5. (a) Section 1.1 of this bill incorporates amendments to Section 21573 of the Government Code proposed by both this bill and AB 232. 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 21573 of the Government Code, and (3) SB 400 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 232, 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 21573 of the Government Code proposed by both this bill and SB 400. 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 21573 of the Government Code, (3) AB 232 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 400 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 21573 of the Government Code proposed by this bill, AB 232, and SB 400. 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 21573 of the Government Code, and (3) this bill is enacted after AB 232 and SB 400, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 6. Section 2.1 of this bill incorporates amendments to Section 21574 of the Government Code proposed by both this bill and AB 232. 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 21574 of the Government Code, and (3) this bill is enacted after AB 232, in which case Section 2 of this bill shall not become operative.

SEC. 7. Section 4.1 of this bill incorporates amendments to Section 21581 of the Government Code proposed by both this bill and SB 400. 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 21581 of the Government Code, and (3) this bill is enacted after SB 400, in which case Section 4 of this bill shall not become operative.

CHAPTER 802

An act to amend Sections 22000, 22001, 22002, 22003, 22004, 22006, 22007, 22008, 22008.5, and 22009 of, to amend and renumber Section 22013 of, to add Section 22005.1 to, to repeal Sections 22010 and 22011 of, and to repeal and add Section 22005 of, the Welfare and Institutions Code, relating to health care coverage.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 22000 of the Welfare and Institutions Code is amended to read:

22000. The California Partnership for Long-Term Care Program is hereby established.

SEC. 2. Section 22001 of the Welfare and Institutions Code is amended to read:

22001. The purpose of the program is to link private long-term care insurance and health care service plan contracts that cover long-term care with the In-Home Supportive Services program (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9) and Medi-Cal, and to provide specified in-home supportive services benefits and specified Medi-Cal benefits to the purchasers of approved and certified insurance policies and health care service plan contracts who qualify under the special provisions of this division.

SEC. 3. Section 22002 of the Welfare and Institutions Code is amended to read:

22002. The State Department of Health Services shall seek any federal waivers and approvals necessary to accomplish the purposes of this division.

SEC. 4. Section 22003 of the Welfare and Institutions Code is amended to read:

22003. (a) Individuals who participate in the program and have resources above the eligibility levels for receipt of medical assistance under Title XIX of the Social Security Act (Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code) shall be eligible to receive those in-home supportive services benefits specified by the State Department of Social Services, and those Medi-Cal benefits specified by the State Department of Health Services, for which they would otherwise be eligible, if, prior to becoming eligible for benefits, they have purchased a long-term care insurance policy or a health care service plan contract covering long-term care that has been certified by the State Department of Health Services pursuant to this division.

(b) Individuals may purchase approved and certified long-term care insurance policies or health care service plan contracts which cover long-term care services in amounts equal to the resources they wish to protect, so long as the amount of insurance purchased exceeds the minimum level set by the State Department of Health Services pursuant to Section 22009.

(c) The resource protection provided by this division shall be effective only for long-term care policies, and health care service plan contracts that cover long-term care services, when the policy or contract is delivered, issued for delivery, or renewed on or after July 1, 1993, to January 1, 2005, inclusive.

SEC. 5. Section 22004 of the Welfare and Institutions Code is amended to read:

22004. Notwithstanding other provisions of law, the resources, to the extent described in subdivision (c), of an individual who purchases an approved and certified long-term care insurance policy or health care service plan contract which covers long-term care services shall not be considered by:

(a) The State Department of Health Services in determining:

(1) Medi-Cal eligibility.

(2) The amount of any Medi-Cal payment.

(3) The amount of any subsequent recovery by the state of payments made for medical services.

(b) The State Department of Social Services in determining:

(1) Eligibility for in-home supportive services provided pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Division 9.

(2) The amount of any payment for in-home supportive services.

(c) The resources not to be considered as provided by this section shall be equal to, or in some proportion set by the State Department of Health Services or State Department of Social Services that is less than equal to, the amount of long-term care insurance payments or benefits made as described in Section 22006.

SEC. 6. Section 22005 of the Welfare and Institutions Code is repealed.

SEC. 7. Section 22005 is added to the Welfare and Institutions Code, to read:

22005. The State Department of Health Services shall only certify a long-term care insurance policy or a health care service plan contract that meets the Medi-Cal asset protection requirements.

SEC. 8. Section 22005.1 is added to the Welfare and Institutions Code, to read:

22005.1. (a) The State Department of Health Services shall only certify a long-term care insurance policy that substantially meets the requirements of Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code, except the requirements of Sections 10232.1, 10232.2, 10232.25, 10232.8, 10232.9, and 10232.92 of the Insurance Code, and that provides all of the items specified in

subdivision (b). The State Department of Health Services shall only certify a health care service plan contract that has been approved by the Department of Corporations pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code as providing substantially equivalent coverage to that required by Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code, and that provides all of the items specified in subdivision (b). Policies issued by organizations subject to the Insurance Code and regulated by the Department of Insurance shall also be approved by the Department of Insurance.

(b) Only policies and contracts that provide all of the following items shall be certified by the department:

(1) Individual assessment and case management by a coordinating entity designated and approved by the department.

(2) Levels and durations of benefits that meet minimum standards set by the State Department of Health Services pursuant to Section 22009.

(3) Protection against loss of benefits due to inflation.

(4) A periodic record issued to the insured including an explanation of insurance payments or benefits paid that count toward Medi-Cal asset protection under this division.

(5) Compliance with any other requirements imposed by regulations adopted by the State Department of Health Services or the State Department of Social Services and consistent with the purposes of this division.

SEC. 9. Section 22006 of the Welfare and Institutions Code is amended to read:

22006. The State Department of Health Services, in determining eligibility for Medi-Cal, and the State Department of Social Services, in determining eligibility for in-home supportive services, shall exclude resources up to, or equal to, the amount of insurance payments or benefits paid by approved and certified long-term care insurance policies or health care service plan contracts which cover long-term care services to the extent that the benefits paid are for all of the following:

(a) In-home supportive services benefits specified in regulations adopted by the State Department of Social Services pursuant to Section 22009, or those services that Medi-Cal approves or benefits that Medi-Cal provides as specified in regulations adopted by the State Department of Health Services pursuant to Section 22009.

(b) Services delivered to insured individuals in a community setting as part of an individual assessment and case management program provided by coordinating entities designated and approved by the State Department of Health Services.

(c) Services the insured individual receives after meeting the disability criteria for eligibility for long-term care benefits established by the State Department of Health Services.

SEC. 10. Section 22007 of the Welfare and Institutions Code is amended to read:

22007. The program shall be designed so that the estimated aggregate state expenditures for long-term care services for individuals participating in the program do not exceed the aggregate expenditures that would be made for these services under the Medi-Cal program in effect prior to the implementation of this program.

SEC. 11. Section 22008 of the Welfare and Institutions Code is amended to read:

22008. Advice and counseling may be provided by the Health Insurance Counseling and Advocacy program within the California Department of Aging to individuals interested in purchasing long-term care insurance or health care service plan contracts that cover long-term care services approved and certified pursuant to this division.

SEC. 12. Section 22008.5 of the Welfare and Institutions Code is amended to read:

22008.5. Individuals who participate in the program shall remain eligible for those in-home supportive services benefits and those Medi-Cal benefits for which they are eligible under the program for the life of the purchaser of the policy or contract, as long as the purchaser maintains his or her insurance policy or health care service plan contract in force, or otherwise qualifies for continued benefits in accordance with regulations promulgated by the departments.

SEC. 13. Section 22009 of the Welfare and Institutions Code is amended to read:

22009. (a) The State Department of Health Services shall adopt regulations to implement this division, including, but not limited to, regulations which establish:

(1) The population and age groups that are eligible to participate in the program.

(2) The minimum level of long-term care insurance or long-term care coverage included in health care service plan contracts that must be purchased to meet the requirement of subdivision (b) of Section 22003.

(3) The amount and types of services that a long-term care insurance policy or health care service plan contract which includes long-term care services must cover to meet the requirements of this division.

(4) Which coordinating entities are designated and approved to deliver individual assessment and case management services to individuals in a community setting, as required by subdivision (b) of Section 22006.

(5) The disability criteria for eligibility for long-term care benefits as required by subdivision (c) of Section 22006.

(6) The specific eligibility requirements for receipt of the Medi-Cal benefits provided for by the program, and those Medi-Cal benefits for which participants in the program shall be eligible.

(b) The State Department of Social Services shall also adopt regulations to implement this division, including, but not limited to, regulations that establish:

(1) The specific eligibility requirements for in-home supportive services benefits.

(2) Those in-home supportive services benefits for which participants in the program shall be eligible.

(c) The State Department of Health Services and the State Department of Social Services shall also jointly adopt regulations that provide for the following:

(1) Continuation of benefits beyond the termination of the program pursuant to Section 22008.5.

(2) The protection of a participant's resources pursuant to Section 22004, and the ratio of resources to long-term care benefit payments as described in subdivision (c) of Section 22004.

(d) The departments shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement this division. The adoption of regulations pursuant to this section in order to implement this division shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety.

Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted pursuant to this section shall not be subject to the review and approval of the Office of Administrative Law. The regulations shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 120 days unless the adopting agency complies with all of the provisions of Chapter 3.5 (commencing with Section 11340) as required by subdivision (c) of Section 11346.1 of the Government Code.

SEC. 14. Section 22010 of the Welfare and Institutions Code is repealed.

SEC. 15. Section 22011 of the Welfare and Institutions Code is repealed.

SEC. 16. Section 22013 of the Welfare and Institutions Code is amended and renumbered to read:

22010. (a) In implementing this division, the State Department of Health Services may contract, on a bid or nonbid basis, with any qualified individual, organization, or entity for services needed to implement the project, and may negotiate contracts, on a nonbid basis, with long-term care insurers, health care service plans, or both, for the provision of coverage for long-term care services that will meet the certification requirements set forth in Section 22005.1 and the other requirements of this division.

(b) In order to achieve maximum cost savings, the Legislature declares that an expedited process for issuing contracts pursuant to this division is necessary. Therefore, contracts entered into on a nonbid basis pursuant to this section shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

CHAPTER 803

An act to add Section 17401 to, and to add Chapter 5 (commencing with Section 17800) to Division 17 of, the Family Code, and to amend Sections 10950, 10951, 10963, 18242, 18243, and 14247 of, to add Section 11475.6 to, and to repeal Section 18246 of, the Welfare and Institutions Code, relating to child support.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 17401 is added to the Family Code, to read:

17401. (a) All of the following shall include notice of, and information about, the child support service hearings available pursuant to Section 10950, provided that there is federal financial participation available as set forth in subdivision (e) of Section 10950:

(1) The informational materials included with the summons and complaint pursuant to subdivision (d) of Section 17400.

(2) The booklet required by subdivision (a) of Section 17434.

(3) Any notice required by subdivision (c) or (h) of Section 17406.

(b) To the extent not otherwise required by law, the local child support agency shall provide notice of, and information about, the child support services hearings available pursuant to Section 10950 in any regularly issued notices to custodial and noncustodial parents subject to Section 17400, provided that there is federal financial participation available as set forth in subdivision (e) of Section 17801.

SEC. 2. Chapter 5 (commencing with Section 17800) is added to Division 17 of the Family Code, to read:

CHAPTER 5. COMPLAINT RESOLUTION

17800. Each local child support agency shall maintain a complaint resolution process. The department shall specify by regulation, no later than July 1, 2001, uniform forms and procedures that each local child support agency shall use in resolving all complaints received from custodial and noncustodial parents. A complaint shall be made within 90 days after the custodial or noncustodial parent affected

knew or should have known of the child support action complained of. The local child support agency shall provide a written resolution of the complaint within 30 days of the receipt of the complaint.

17801. (a) A custodial or noncustodial parent who is dissatisfied with the local child support agency's resolution of a complaint shall be accorded an opportunity for a state hearing when any one or more of the following actions or failures to take action by the department or the local child support agency is claimed by the parent:

(1) An application for child support services has been denied or has not been acted upon within the required timeframe.

(2) The child support services case has been acted upon in violation of state or federal law or regulation or department letter ruling, or has not yet been acted upon within the required timeframe, including services for the establishment, modification, and enforcement of child support orders and child support accountings.

(3) Child support collections have not been distributed or have been distributed or disbursed incorrectly, or the amount of child support arrears, as calculated by the department or the local child support agency is inaccurate. The amount of the court order for support, including current support and arrears, is not subject to a state hearing under this section.

(4) The child support agency's decision to close a child support case.

(b) Prior to requesting a hearing pursuant to subdivision (a), the custodial or noncustodial parent shall exhaust the complaint resolution process required in Section 17800, unless the local child support agency has not, within the 30-day period required by that section, submitted a written resolution of the complaint. If the custodial or noncustodial parent does not receive that timely written resolution he or she may request a hearing pursuant to subdivision (a).

(c) A hearing shall be provided under subdivision (a) when the request for a hearing is made within 90 days after receiving the written notice of resolution required in Section 17800 or, if no written notice of resolution is provided within 30 days from the date the complaint was made, within 90 days after making the complaint.

(d) A hearing under subdivision (a) shall be set to commence within 30 days after the request is filed, and at least 10 days prior to the hearing, all parties shall be given written notice of the time and place of the hearing. A final hearing decision shall be rendered within 20 working days of the date of the hearing.

(e) To the extent not inconsistent with this section, hearings under subdivision (a) shall be provided in the same manner in which hearings are provided in Sections 10950 to 10967 of the Welfare and Institutions Code and the State Department of Social Services' regulations implementing and interpreting those sections.

(f) Pendency of a state hearing shall not affect the obligation to comply with an existing child support order.

(g) Any child support determination that is subject to the jurisdiction of the superior court and that is required by law to be addressed by motion, order to show cause, or appeal under this code shall not be subject to a state hearing under this section. The director shall, by regulation, specify and exclude from the subject matter jurisdiction of state hearings provided under subdivision (a), grievances arising from a child support case in the superior court which must, by law, be addressed by motion, order to show cause, or appeal under this code.

(h) The local child support agency and the Franchise Tax Board shall comply with, and execute, every decision of the director rendered pursuant to this section.

(i) The director shall contract with the State Department of Social Services or the Office of Administrative Hearings for the provision of state hearings in accordance with this section.

(j) This section shall be implemented only to the extent that there is federal financial participation available at the child support funding rate set forth in Section 655(a)(2) of Title 42 of the United States Code.

17802. To the extent that a custodial or noncustodial parent has a complaint concerning the action or inaction of the Franchise Tax Board in any child support case referred to the Franchise Tax Board pursuant to Section 17400, that complaint shall be resolved pursuant to Section 17800 by the local child support agency that is responsible for the case. The Franchise Tax Board shall cooperate with the local child support agency in resolving the complaint within the timeframes required by Section 17800. If the custodial or noncustodial parent requests a hearing pursuant to Section 17801, the Franchise Tax Board shall ensure that a representative attends the hearing if deemed necessary by the local child support agency.

17803. The custodial or noncustodial parent, within one year after receiving notice of the director's final decision, may file a petition with the superior court, under Section 1094.5 of the Code of Civil Procedure, praying for a review of the entire proceedings in the matter, upon questions of law involved in the case. The review, if granted, shall be the exclusive remedy available to the custodial or noncustodial parent for review of the director's decision. The director shall be the sole respondent in the proceedings. No filing fee shall be required for the filing of a petition pursuant to this section. Any such petition to the superior court shall be entitled to a preference in setting a date for hearing on the petition. No bond shall be required in the case of any petition for review, nor in any appeal therefrom. The custodial or noncustodial parent shall be entitled to reasonable attorney's fees and costs, if he or she obtains a decision in his or her favor.

17804. Each local child support agency shall establish the complaint resolution process specified in Section 17800 as of the date it transitions from the office of the district attorney to the county

agency as provided in Sections 17304 and 17305, but no earlier than July 1, 2001. The department shall implement the state hearing requirements specified in Section 17801 no later than July 1, 2001.

SEC. 3. Section 10950 of the Welfare and Institutions Code is amended to read:

10950. (a) If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his or her application for or receipt of public social services, if his or her application is not acted upon with reasonable promptness, or if any person who desires to apply for public social services is refused the opportunity to submit a signed application therefor, and is dissatisfied with that refusal, he or she shall be accorded an opportunity for a state hearing.

(b) A custodial or noncustodial parent shall be accorded an opportunity for a state hearing when any one or more of the following actions or failures to take action by the department or a state or county agency operating pursuant to Section 11350.1 or 11475.1 is claimed by the parent:

(1) An application for child support services has been denied or has not been acted upon within the required timeframe.

(2) The child support services case has been acted upon in violation of state or federal law or regulation or department letter ruling, or has not yet been acted upon within the required timeframe, including services for the establishment, modification, and enforcement of child support orders and child support accountings.

(3) Child support collections have not been distributed or have been distributed or disbursed incorrectly, or the amount of child support arrears, as calculated by the department or a state or county agency operating pursuant to Section 11350.1 or 11475.1, is inaccurate. The amount of the court order for support, including current support and arrears, is not subject to a state hearing under this section.

(4) The child support agency's decision to close a child support case.

(c) Hearings under subdivision (b) shall be provided in the same manner in which hearings are provided with respect to an application for, or receipt of, other public social services under this section. Pendency of a state hearing shall not affect the obligation to comply with an existing support order.

(d) Each district attorney shall establish a complaint resolution process. The department shall specify, by regulation, uniform forms and procedures that each district attorney shall use in resolving complaints received from custodial and noncustodial parents. A complaint shall be made within 90 days after the custodial or noncustodial parent affected knew or should have known of the child support case action complained of. The district attorney shall provide a written resolution of the complaint within 30 days of the receipt of the complaint. Prior to requesting a hearing pursuant to subdivision

(b), the custodial or noncustodial parent shall exhaust the complaint resolution process, unless the district attorney has not, within the 30-day period required by this subdivision, submitted a written resolution of the complaint. If the custodial or noncustodial parent does not receive that timely written resolution or is dissatisfied with the resolution of the complaint, he or she may request a hearing pursuant to subdivision (b).

(e) Subdivisions (b), (c), and (d) shall be implemented only to the extent that there is federal financial participation available at the child support funding rate set forth in paragraph (2) of subsection (a) of Section 655 of Title 42 of the United States Code.

(f) A request for a state hearing may be made in person or through an authorized representative, without the necessity of filing a claim with the board of supervisors, by filing a request with the department or the State Department of Health Services, whichever department administers the public social service.

(g) Priority in setting and deciding cases shall be given in those cases in which aid or services are not being provided pending the outcome of the hearing. This priority shall not be construed to permit or excuse the failure to render decisions within the time allowed under federal and state law.

(h) Notwithstanding any other provision of this code, there is no right to a state hearing when either of the following circumstances exists:

(1) State or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual request is incorrect grant computation.

(2) The sole issue is a federal or state law requiring an automatic change in services or medical assistance which adversely affects some or all recipients.

(i) (1) For the purposes of administering health care services and medical assistance, the State Director of Health Services shall have those powers and duties conferred on the Director of Social Services by this chapter to conduct state hearings in order to secure approval of a state plan under applicable federal law.

(2) The State Director of Health Services may contract with the State Department of Social Services for the provision of state hearings in accordance with this chapter.

(j) Any child support determination that is subject to the jurisdiction of the superior court and that is required by law to be addressed by motion, order to show cause, or appeal under the Family Code or this code shall not be subject to a state hearing under this section. The director shall, by regulation, specify and exclude from the subject matter jurisdiction of state hearings provided under subdivision (b), grievances arising from a child support case in the superior court which must, by law, be addressed by motion, order to show cause, or appeal under the Family Code or this code.

(k) As used in this chapter, "recipient" means an applicant for or recipient of public social services, including child support services, except aid exclusively financed by county funds or aid under Article 1 (commencing with Section 12000) to Article 6 (commencing with Section 12250), inclusive, of Chapter 3 of Part 3, and under Article 8 (commencing with Section 12350) of Chapter 3 of Part 3, or those activities conducted under Chapter 6 (commencing with Section 18350) of Part 6, and shall include any individual who is an approved adoptive parent, as described in subdivision (c) of Section 8708 of the Family Code, and who alleges that he or she has been denied or has experienced delay in the placement of a child for adoption solely because he or she lives outside the jurisdiction of the department.

(*l*) The decision of a district attorney to proceed or to decline to proceed under Section 270 of the Penal Code, or seek or not seek contempt charges, shall not be subject to review in a hearing under this section.

(m) For the purposes of this section, a superior court is not a state or county agency operating pursuant to Section 11350.1 or 11475.1.

SEC. 4. Section 10951 of the Welfare and Institutions Code is amended to read:

10951. (a) No person shall be entitled to a hearing pursuant to this chapter unless he or she files his or her request for that hearing within 90 days after the order or action complained of.

(b) A hearing shall be provided under subdivision (b) of Section 10950 when the request for a hearing is made within 90 days after receiving the written notice of resolution provided in subdivision (d) of Section 10950 or, if no written notice is provided within 30 days from the date the complaint was made, within 90 days after making the complaint.

SEC. 5. Section 10963 of the Welfare and Institutions Code is amended to read:

10963. The county director and a state or county agency acting pursuant to Section 11350.1 or 11475.1 shall comply with, and execute, every decision of the director rendered pursuant to this chapter.

SEC. 7. Section 18242 of the Welfare and Institutions Code is amended to read:

18242. (a) Upon application by a county board of supervisors, the department may approve up to three demonstration projects to test models of child support assurance. The projects shall either test different models of child support assurance or may test the same model if counties in which the same model is tested involve counties with different demographics.

(b) The department may approve joint projects by two or more counties if both of the following apply:

(1) The equity of access to the project and its related services is ensured to all participants.

(2) The project includes appropriate operational and fiscal arrangements between the counties submitting the joint project.

(c) If the department approves a joint project by two or more counties, that joint project shall constitute one of the projects authorized by subdivision (a).

(d) It is the intent of the Legislature that the purpose of the demonstration projects authorized by this article is to test child support assurance models as alternatives to welfare under which families with earnings and a child support order receive a guaranteed child support payment, in lieu of a grant under the CalWORKs program, from funds continuously appropriated for the CalWORKs program.

(e) A county may limit the number of families that will be permitted to enroll in its child support assurance demonstration program.

SEC. 8. Section 18243 of the Welfare and Institutions Code is amended to read:

18243. The department shall develop research designs to ensure thorough evaluations of the child support assurance demonstration projects that shall include, but not be limited to, the impact of the project on work participation rates of custodial parents, household incomes and family well-being, CalWORKs participation rates and costs, rates of paternity and child support order establishment, and any other relevant information the director may require.

SEC. 9. Section 18246 of the Welfare and Institutions Code is repealed.

SEC. 10. Section 18247 of the Welfare and Institutions Code is amended to read:

18247. (a) The state share of child support assurance payments under this article shall be paid in accordance with Section 15200.

(b) The department shall, to the extent possible, ensure that no funding streams will be utilized to pay for child support assurance payments if the use of the funding streams would cause participants to be subject to the limitations of Section 11454 or any similar limitation.

(c) The county administrative cost for the operation of a child support assurance program shall be paid from the county's allocation provided under Sections 15204.2 and 15204.3.

SEC. 11. Sections 1 and 2 of this bill shall become operative only if either Assembly Bill 196 or Senate Bill 542, or both, are enacted into law during the 1999–2000 Regular Session, and as enacted, either or both bills add Division 17 (commencing with Section 17000) to the Family Code, in which case Sections 3, 4, 5, and 6 of this bill shall not become operative.

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.

CHAPTER 804

An act to add Section 6253.2 to the Government Code, relating to public records, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 6253.2 is added to the Government Code, to read:

6253.2. (a) Notwithstanding any other provision of this chapter to the contrary, information regarding persons paid by the state to provide in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code or personal care services pursuant to Section 14132.95 of the Welfare and Institutions Code, shall not be subject to public disclosure pursuant to this chapter, except as provided in subdivision (b).

(b) Copies of names, addresses, and telephone numbers of persons described in subdivision (a) shall be made available, upon request, to an exclusive bargaining agent and to any labor organization seeking representation rights pursuant to subdivision (c) of Section 12301.6 or Section 12302 of the Welfare and Institutions Code or Chapter 10 (commencing with Section 3500) of Division 4 of Title 1. This information shall not be used by the receiving entity for any purpose other than the employee organizing, representation, and assistance activities of the labor organization.

(c) This section shall apply solely to individuals who provide services under the In-Home Supportive Services Program (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code) or the Personal Care Services Program pursuant to Section 14132.95 of the Welfare and Institutions Code.

(d) Nothing in this section is intended to alter or shall be interpreted to alter the rights of parties under the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4) or any other labor relations law.

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.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the records of those persons paid by the state to provide in-home supportive services or personal care services may become available at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 805

An act to amend Sections 361.5 and 366.21 of the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 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, 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 a permanent plan of adoption, guardianship, or long-term foster care 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. 1.1. 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, 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 a permanent plan of adoption, guardianship, or long-term foster care 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. 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 caregivers, 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 caregiver, 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 caregiver, 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 caregivers, 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 caregiver, 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 caregiver, 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 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 in

any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the 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, the court 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 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. 2.1. 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 caregivers, 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 caregiver, 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 caregiver, 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 caregivers, 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 caregiver, 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 caregiver, 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 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 in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the 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 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. 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 caregivers, 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 caregiver, 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 caregiver, 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 caregivers, 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 caregiver, 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 caregiver, 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 caregivers, 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 caregiver, 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 caregiver, 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 caregivers, 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 caregiver, 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 caregiver, 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. (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) SB 1226 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 SB 1226. 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 SB 1226, 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 SB 1226. 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 SB 1226, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 4. (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) SB 1226 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 SB 1226. 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 SB 1226 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 SB 1226. 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 366.2 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 645 and SB 1226, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 806

An act to amend Sections 18935 and 19683 of the Government Code, to amend Section 289.6 of, and to repeal and add Section 6129 of, the Penal Code, relating to corrections.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. The Legislature finds and declares that the mission of the Youth and Adult Correctional Agency and all of the boards and departments under its jurisdiction is such a serious matter that any incident of staff misconduct is an unacceptable risk to the public safety of all Californians. Similarly, any incident of retaliation against an employee who reports improper governmental activities is unacceptable. In that vein, the purpose of this bill is to assure the people of California that reports of improper governmental activity by corrections employees are responded to expeditiously and appropriately, and without retaliation.

SEC. 2. Section 18935 of the Government Code is amended to read:

18935. The board may refuse to examine or, after examination, may refuse to declare as an eligible or may withhold or withdraw from certification, prior to appointment, anyone who comes under any of the following categories:

(a) Lacks any of the requirements established by the board for the examination or position for which he or she applies.

(b) At the time of examination has permanent status in a position of equal or higher class than the examination or position for which he or she applies.

(c) Is physically or mentally so disabled as to be rendered unfit to perform the duties of the position to which he or she seeks appointment.

(d) Is addicted to the use of intoxicating beverages to excess.

(e) Is addicted to the use of controlled substances.

(f) Has been convicted of a felony, or convicted of a misdemeanor involving moral turpitude.

(g) Has been guilty of infamous or notoriously disgraceful conduct.

(h) Has been dismissed from any position for any cause which would be a cause for dismissal from the state service.

(i) Has resigned from any position not in good standing or in order to avoid dismissal.

(j) Has intentionally attempted to practice any deception or fraud in his or her application, in his or her examination or in securing his or her eligibility.

(k) Has waived appointment three times after certification from the same employment list.

(*l*) Has failed to reply within a reasonable time, as specified by the board, to communications concerning his or her availability for employment.

(m) Has made himself or herself unavailable for employment by requesting that his or her name be withheld from certification.

(n) Is, in accordance with board rule, found to be unsuited or not qualified for employment.

(o) Has engaged in unlawful reprisal or retaliation in violation of Article 3, Chapter 6.5 (commencing with Section 8547 of the Government Code), as determined by the State Personnel Board or the court.

SEC. 3. Section 19683 of the Government Code is amended to read:

19683. (a) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 8547.3 within 10 working days of its submission. The executive officer shall complete findings of the hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings to the complaining state employee or applicant for state employment and to the appropriate supervisor, manager, or appointing authority. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this subdivision shall not apply.

(b) If the findings of the executive officer set forth acts of alleged misconduct by the supervisor, manager, or appointing power, the

supervisor, manager, or appointing power may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's normal rules governing appeals, hearings, investigations, and disciplinary proceedings.

(c) If, after the hearing, the State Personnel Board determines that a violation of Section 8547.3 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, backpay, restoration of lost service credit, if appropriate, and the expungement of any adverse records of the state employee or applicant for state employment who was the subject of the alleged acts of misconduct prohibited by Section 8547.3.

(d) Whenever the board determines that a manager or supervisor has violated Section 8547.3, it shall cause an entry to that effect to be made in the manager's or supervisor's official personnel records. Adverse action shall also be invoked by the appointing power against the offending manager or supervisor in accordance with Sections 8547.8 and 19572.

(e) Notwithstanding Section 8547.8, any state officer or employee filing a complaint of reprisal or retaliation pursuant to subdivision (a) also shall have previously filed a complaint of improper governmental activity with the State Auditor, pursuant to Section 8547.7, or with the Inspector General, pursuant to Section 6129 of the Penal Code.

(f) In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by public employees, the State Personnel Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

SEC. 4. Section 289.6 of the Penal Code is amended to read:

289.6. (a) (1) An employee or officer of a public entity health facility, or an employee, officer, or agent of a private person or entity that provides a health facility or staff for a health facility under contract with a public entity, who engages in sexual activity with a consenting adult who is confined in a health facility is guilty of a public offense. As used in this paragraph, "health facility" means a health facility as defined in subdivisions (b), (e), (g), (h), and (j), and subparagraph (C) of paragraph (2) of subdivision (i) of Section 1250 of the Health and Safety Code, in which the victim has been confined involuntarily.

(2) An employee or officer of a public entity detention facility, or an employee, officer, or agent of a private person or entity that provides a detention facility or staff for a detention facility, or person

or agent of a public or private entity under contract with a detention facility, or a volunteer of a private or public entity detention facility, who engages in sexual activity with a consenting adult who is confined in a detention facility, is guilty of a public offense.

(3) An employee with a department, board, or authority under the Youth and Adult Correctional Agency or a facility under contract with a department, board, or authority under the Youth and Adult Correctional Agency, who, during the course of his or her employment directly provides treatment, care, control, or supervision of inmates, wards, or parolees, and who engages in sexual activity with a consenting adult who is an inmate, ward, or parolee, is guilty of a public offense.

(b) As used in this section, the term "public entity" means the state, federal government, a city, a county, a city and county, a joint county jail district, or any entity created as a result of a joint powers agreement between two or more public entities.

(c) As used in this section, the term "detention facility" means:

(1) A prison, jail, camp, or other correctional facility used for the confinement of adults or both adults and minors.

(2) A building or facility used for the confinement of adults or adults and minors pursuant to a contract with a public entity.

(3) A room that is used for holding persons for interviews, interrogations, or investigations and that is separate from a jail or located in the administrative area of a law enforcement facility.

(4) A vehicle used to transport confined persons during their period of confinement.

(5) A court holding facility located within or adjacent to a court building that is used for the confinement of persons for the purpose of court appearances.

(d) As used in this section, "sexual activity" means:

(1) Sexual intercourse.

(2) Sodomy, as defined in subdivision (a) of Section 286.

(3) Oral copulation, as defined in subdivision (a) of Section 288a.

(4) Penetration, however slight, of the genital or anal openings of another person by a foreign object, substance, instrument, or device, for the purpose of sexual arousal, gratification, or abuse.

(5) The rubbing or touching of the breasts or sexual organs of another, or of oneself in the presence of and with knowledge of another, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of oneself or another.

(e) Consent by a confined person or parolee to sexual activity proscribed by this section is not a defense to a criminal prosecution for violation of this section.

(f) This section does not apply to sexual activity between consenting adults that occurs during an overnight conjugal visit that takes place pursuant to a court order or with the written approval of an authorized representative of the public entity that operates or contracts for the operation of the detention facility where the

conjugal visit takes place, to physical contact or penetration made pursuant to a lawful search, or bona fide medical examinations or treatments, including clinical treatments.

(g) Any violation of paragraph (1) of subdivision (a), or a violation of paragraph (2) or (3) of subdivision (a) as described in paragraph (5) of subdivision (d), is a misdemeanor.

(h) Any violation of paragraph (2) or (3) of subdivision (a), as described in paragraph (1), (2), (3), or (4) of subdivision (d), shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison, or by a fine of not more than ten thousand dollars ($10,000) or by both that fine and imprisonment.

(i) Any person previously convicted of a violation of this section shall, upon a subsequent violation, be guilty of a felony.

(j) Anyone who is convicted of a felony violation of this section who is employed by a department, board, or authority within the Youth and Adult Correctional Agency shall be terminated in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Title 2 of Division 5 of the Government Code). Anyone who has been convicted of a felony violation of this section shall not be eligible to be hired or reinstated by a department, board, or authority within the Youth and Adult Correctional Agency.

SEC. 5. Section 6129 of the Penal Code is repealed.

SEC. 6. Section 6129 is added to the Penal Code, to read:

6129. (a) (1) For purposes of this section, "employee" means any person employed by the Youth and Adult Correctional Agency, the Department of Corrections, the Department of the Youth Authority, the Board of Corrections, the Board of Prison Terms, the Youthful Offender Parole Board, or the Inspector General.

(2) For purposes of this section, "retaliation" means intentionally engaging in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee who has done either of the following:

(A) Has disclosed or is disclosing to any employee at a supervisory or managerial level, what the employee, in good faith, believes to be improper governmental activities.

(2) Has cooperated or is cooperating with any investigation of improper governmental activities.

(b) (1) Upon receiving a complaint of retaliation from an employee, the Inspector General shall commence an investigation within 30 days of receiving the complaint. All investigations conducted pursuant to this section shall be performed, where applicable, in accordance with the requirements of Chapter 9.7 (commencing with Section 3300) of Title 1 of Division 4 of the Government Code.

(2) When investigating a complaint, in determining whether retaliation has occurred, the Inspector General shall consider, among other things, whether any of the following either actually occurred or were threatened:

(A) Unwarranted or unjustified staff changes.

(B) Unwarranted or unjustified letters of reprimand or other disciplinary actions, or unsatisfactory evaluations.

(C) Unwarranted or unjustified formal or informal investigations.

(D) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are unprofessional,, or foster a hostile work environment.

(E) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are contrary to the rules, regulations, or policies of the workplace.

(3) Upon authorization of the complainant employee, the Inspector General may release the findings of the investigation of alleged retaliation to the State Personnel Board for appropriate action.

(c) Any employee at any rank and file, supervisory, or managerial level, who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee, pursuant to paragraph (2) of subdivision (a), shall be disciplined by adverse action as provided in Section 19572 of the Government Code. If no adverse action is taken, the State Personnel Board shall invoke adverse action proceedings as provided in Section 19583.5 of the Government Code.

(d) (1) In addition to all other penalties provided by law, including Section 8547.8 of the Government Code or any other penalties that the sanctioning authority may determine to be appropriate, any state employee at any rank and file, supervisory, or managerial level found by the State Personnel Board to have intentionally engaged in acts of reprisal, retaliation, threats, or coercion shall be suspended for not less than 30 days without pay, and shall be liable in an action for damages brought against him or her by the injured party. If the State Personnel Board determines that a lesser period of suspension is warranted, the reasons for that determination must be justified in writing in the decision.

(2) Punitive damages may be awarded by the court if the acts of the offending party are proven to be malicious. If liability has been established, the injured party also shall be entitled to reasonable attorney's fees as provided by law.

(e) Nothing in this section shall prohibit the employing entity from exercising its authority to terminate, suspend, or discipline an employee who engages in conduct prohibited by this section.

(f) The Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms shall refer matters involving criminal conduct to the proper law enforcement authorities in the appropriate jurisdiction for further action. The entity making a referral to the local district attorney shall also notify the Attorney General of the action. If the local district attorney refuses to accept the case, he or she shall notify the referring entity who shall

subsequently refer the matter to the Attorney General. If the local district attorney has not acted on the matter, the referring entity shall notify the Attorney General. It is the intent of the Legislature that the Department of Justice avoid any conflict of interest in representing the State of California in any civil litigation that may arise in a case in which an investigation has been or is currently being conducted by the Bureau of Investigation by contracting when necessary for private counsel.

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.

CHAPTER 807

An act to add and repeal Article 5.6 (commencing with Section 11629.9) of Chapter 1 of Part 3 of Division 2 of the Insurance Code, and to add Section 16020.2 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. It is the goal of the Legislature that the pilot program established by this act, if successful, should be expanded statewide.

SEC. 2. Article 5.6. (commencing with Section 11629.9) is added to Chapter 1 of Part 3 of Division 2 of the Insurance Code, to read:

Article 5.6. City and County of San Francisco Low-Cost Automobile Insurance Pilot Program

11629.9. (1) There is established, within the California Automobile Assigned Risk Plan established under Section 11620, a low-cost automobile insurance pilot program for the City and County of San Francisco.

(2) The commissioner, after a public hearing, shall approve or issue a reasonable plan for the equitable apportionment, among insurers required to participate in the California Automobile Assigned Risk Plan established under Section 11620, of persons residing in the City and County of San Francisco who are eligible to purchase through the pilot program established in that city and

county a low-cost automobile insurance policy, as described in Section 11629.91. The pilot program shall be conducted in conjunction with the California Automobile Assigned Risk Plan established under Section 11620.

11629.91. A low-cost automobile insurance policy for purposes of the pilot program established under this article shall have all of the following attributes:

(a) The policy shall offer coverage in the amount of ten thousand dollars ($10,000) for bodily injury to, or death of, each person as a result of any one accident and, subject to that limit as to one person, the amount of twenty thousand dollars ($20,000) for bodily injury to, or death of all persons as a result of any one accident, and the amount of three thousand dollars ($3,000) for damage to property of others as a result of any one accident.

(b) The policy shall have an initial term of one year, renewable on an annual basis thereafter.

(c) The policy shall cover the person named in the policy, and to the same extent that insurance is provided to the named insured, any other person using the automobile, provided the use is with his or her permission, express or implied, and within the scope of that permission, except that the policy shall not cover members of the named insured's household who do not satisfy the requirements of subdivisions (b) to (e), inclusive, of Section 11629.93.

(d) The policy shall provide coverage for an automobile with a value, at the time of purchase by the insured, of twelve thousand dollars ($12,000) or less, as evidenced by the value given to the automobile by the Department of Motor Vehicles in assessing vehicle license fees.

11629.92. (a) The annual rate offered initially under the pilot program for the low-cost automobile insurance policy, until the time that the rate is adjusted, shall be four hundred ten dollars ($410). A surcharge of 25 percent of the base rate shall be added if the named insured is an unmarried male between the ages of 19 and 24, inclusive, or if an unmarried male between the ages 19 and 24, inclusive, resides in the household of the named insured and will be a driver of the automobile covered under the low-cost policy.

(b) In addition to existing premium installment options offered by The California Automobile Assigned Risk Plan under Article 4 (commencing with Section 11620), the plan shall also make available to insureds under the pilot program, a premium installment option pursuant to which an insured is required to pay one hundred dollars ($100) upon issuance of the low-cost policy, followed thereafter by six other payments. No other premium financing arrangement shall be permitted.

(c) Rates for policies issued under the pilot program shall be reviewed and revised as follows:

(1) Rates shall be sufficient to cover (A) losses incurred under policies issued under the pilot program, and (B) expenses, including,

but not limited to, all reasonable and necessary expenses such as the costs of administration, underwriting, taxes, commissions, and claims adjusting, that are incurred due to participation in this pilot program. For purposes of this paragraph, "losses incurred" means claims paid, claims incurred and reported, and claims incurred but not yet reported. In assessing loss reserves, the commissioner shall only allow loss reserves that are estimated from actual losses in the pilot program or comparable data by a licensed statistical agent, as adjusted to reflect coverage provided in this pilot program.

(2) Rates shall be set so as to result in no projected subsidy of the pilot program by those policyholders of insurers issuing policies under the pilot program who are not participants in the pilot program.

(3) Rates shall be set with respect to this pilot program, and the pilot program established in Article 5.5 (commencing with Section 11629.7) of the 1999–2000 Regular Session, so as to result in no projected subsidy by policyholders in one pilot program of policyholders in the other pilot program.

(4) Commencing on January 1, 2001, and annually thereafter, the California Automobile Assigned Risk Plan shall submit the loss and expense data, together with a proposed rate for the low-cost automobile policy for the pilot program, to the commissioner for approval in accordance with this chapter. The commissioner shall act on the recommendation within 90 days.

11629.93. A low-cost automobile insurance policy under the pilot program shall only be available for purchase by persons who satisfy the following eligibility requirements:

(a) The person shall be in a household with a gross annual household income that does not exceed 150 percent of the federal poverty level.

(b) The person shall be no less than 19 years of age and have been continuously licensed to drive an automobile for the previous three years.

(c) The person shall have not more than one of either, but not both, of the following within the previous three years:

(1) A property damage only accident in which the driver was principally at fault.

(2) A point for a moving violation.

(d) The person shall not have on record within the previous three years, an at-fault accident involving bodily injury or death.

(e) The person shall not have a felony or misdemeanor conviction for a violation of the Vehicle Code on his or her motor vehicle record.

(f) The person shall not be a college student claimed as a dependent of another person for federal or state income tax purposes.

11629.94. (a) Application may be made through any producer certified by the plan. The applicant, in order to demonstrate financial eligibility to purchase a low-cost automobile insurance policy under

the pilot program, shall present at the time of applying for the policy, a copy of the applicant's federal or state income tax return for the previous year or other reliable evidence from a governmental agency or governmental means-tested program of the applicant's gross annual household income, pursuant to regulations issued under subdivision (b) of Section 11629.99.

(b) The applicant shall certify that the representations made in the documents submitted as proof of financial eligibility and in the application for the policy are true, correct, and contain no material misrepresentations or omissions of fact to the best knowledge and belief of the applicant.

(c) The certified producer shall forward the application, supporting documents, and the applicant's certification to the California Automobile Assigned Risk Plan.

11629.95. (a) A certified producer shall provide to an applicant for a low-cost automobile insurance policy under this article a notice relating to coverage under the policy. The notice shall be provided in a separate document at the time of application, and include the following statement in 14-point boldface type:

"NOTICE

INSURANCE COVERAGE PROVIDED IN THE POLICY YOU ARE BUYING CONTAINS REDUCED LIABILITY COVERAGE FOR PERSONAL INJURIES OR PROPERTY DAMAGE RESULTING FROM THE OPERATION OF THE INSURED VEHICLE. IF LOSSES FROM AN AUTOMOBILE ACCIDENT EXCEED THE COVERAGE PROVIDED BY THIS POLICY, YOU CAN BE HELD PERSONALLY LIABLE AND RESPONSIBLE FOR THOSE LOSSES.

THIS POLICY PROVIDES LIABILITY COVERAGE FOR INJURIES OR DEATH CAUSED TO OTHER PERSONS IN THE TOTAL AMOUNT OF TEN THOUSAND DOLLARS ($10,000) PER PERSON IN ANY ONE ACCIDENT, AND UP TO A TOTAL AMOUNT OF TWENTY THOUSAND ($20,000) FOR ALL PERSONS IN ANY ONE ACCIDENT. THE POLICY ALSO PROVIDES UP TO A TOTAL AMOUNT OF THREE THOUSAND DOLLARS ($3,000) IN LIABILITY COVERAGE FOR PROPERTY DAMAGE IN ANY ONE ACCIDENT. IF YOU WANT MORE INSURANCE COVERAGE, YOU MUST REQUEST A DIFFERENT POLICY.

THIS POLICY ALSO DOES NOT COVER DAMAGE TO YOUR OWN VEHICLE, LOSSES RESULTING FROM YOUR BODILY INJURY OR DEATH, OR COVERAGE FOR LOSSES CAUSED BY AN UNINSURED OR UNDERINSURED DRIVER. HOWEVER,

THESE OTHER COVERAGES MAY BE AVAILABLE AT EXTRA COST THROUGH OTHER INSURERS.
THIS POLICY DOES NOT COVER ANY OTHER DRIVER IN YOUR HOUSEHOLD WHO:
(a) IS UNDER 19 YEARS OF AGE; OR
(b) HAS LESS THAN 3 YEARS OF CONTINUOUSLY LICENSED DRIVING EXPERIENCE; OR
(c) HAS MORE THAN ONE OF EITHER, OR BOTH, OF THE FOLLOWING:
—A PROPERTY DAMAGE ONLY ACCIDENT IN WHICH THE DRIVER WAS PRINCIPALLY AT FAULT.
—A POINT FOR A MOVING VIOLATION; OR
(d) HAS IN THE PREVIOUS 3 YEARS AN AT-FAULT ACCIDENT INVOLVING BODILY INJURY OR DEATH; OR
(e) HAS A FELONY OR MISDEMEANOR CONVICTION FROM A VIOLATION OF THE VEHICLE CODE ON HIS OR HER MOTOR VEHICLE RECORD."

(b) When the certified producer establishes delivery of the disclosure form specified in subdivision (a) by obtaining the signature of the applicant or insured, there shall be a conclusive presumption that the certified producer has complied with the disclosure requirements of this section.

11629.96. For a low-cost automobile insurance policy issued pursuant to the pilot program, certified producers shall be entitled to the same commission rate as is paid by the California Automobile Assigned Risk Plan for private passenger, nonfleet risks under Article 4 (commencing with Section 11620). No other fees of any kind may be charged or collected in this regard and the sale of a low-cost policy under this article shall not be conditioned on the purchase of any other product or service.

11629.97. (a) A low-cost automobile insurance policy issued pursuant to the pilot program shall be canceled only for the following reasons:

(1) Nonpayment of premium.

(2) Fraud or material misrepresentation affecting the policy or the insured.

(3) The purchase of additional automobile liability insurance coverage in violation of subdivision (a) of Section 11629.98.

(4) The purchase or maintenance of automobile liability insurance coverage other than a low-cost policy for any additional vehicles in the insured's household, in violation of subdivision (b) of Section 11629.98.

(b) A policy shall be nonrenewed only for the following reasons:

(1) A substantial increase in the hazard insured against.

(2) The insured no longer meets the applicable eligibility requirements. In this regard, the eligibility of an insured shall be recertified by the California Automobile Assigned Risk Plan after the

first year of eligibility, and annually thereafter by the insurer that issued the policy.

11629.98. (a) An insured under the pilot program shall not purchase automobile liability insurance coverage that is in addition to the liability coverage provided by the low-cost policy. However, the insured may purchase any other additional type of automobile insurance coverage, such as uninsured motorist coverage or collision coverage outside the plan.

(b) An insured under the pilot program shall not purchase or maintain any automobile liability insurance coverage other than a low-cost policy for any additional vehicles in the insured's household.

(c) No more than two low-cost policies are permitted in an insured's household.

11629.99. (a) The pilot program is authorized to commence operations on January 1, 2000, but shall be fully operational no later than July 1, 2000.

(b) To this end, the commissioner, in consultation with the California Automobile Assigned Risk Plan, shall adopt regulations to implement the provisions of this article within 60 days of its effective date. The regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code, and for purposes of that chapter, 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.

11629.991. Notwithstanding the coverage amounts required by Section 16056 of the Vehicle Code, a low-cost automobile policy issued under the pilot program shall satisfy the financial responsibility requirements of Section 16021 of the Vehicle Code.

11629.992. The California Automobile Assigned Risk Plan shall report to the Legislature on an annual basis, commencing January 1, 2001, and at those additional times as it deems prudent, on the status of the pilot program.

11629.993. Nothing in this article is intended to amend or otherwise affect or interpret any provision of Proposition 103, approved by the electors on November 8, 1988, and no provision of that initiative measure applies to this article.

11629.994. An action challenging the constitutionality of the establishment of the pilot program by this article shall be commenced in a court of competent jurisdiction no later than February 1, 2000.

11629.995. 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. 3. Section 16020.2 is added to the Vehicle Code, to read:

16020.2. (a) On and after January 1, 2004, Section 4000.37 does not apply in the City and County of San Francisco.

(b) On and after January 1, 2004, subdivisions (a) and (b) of Section 16028 do not apply to a person who drives a motor vehicle upon a highway in the City and County of San Francisco.

CHAPTER 808

An act to amend Sections 1600 and 1603 of the Insurance Code, and to add Section 12208 to the Revenue and Taxation Code, relating to insurance.

[Approved by Governor October 7, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1600 of the Insurance Code is amended to read:

1600. The commissioner shall require every foreign insurer, as a condition precedent to receiving and holding a certificate of authority, to file and maintain in the commissioner's office a writing designating an agent for service of process. The agent designated may be any person residing in this state, including, but not limited to, any corporate officer of the insurer. The writing shall state the name of the agent and his or her place of business in this state with sufficient particularity so that he or she can readily be found by peace officers or process servers. Appointment of an agent reasonably available for service of papers, notice, proof of loss, summons or other process during business hours shall be continuously maintained by every admitted insurer subject to this article while it holds a valid and unrevoked certificate of authority.

SEC. 2. Section 1603 of the Insurance Code is amended to read:

1603. The person appointed and designated pursuant to Section 1600 shall be deemed in law a general agent, and shall for service of process be the principal agent of the insurer in this state.

SEC. 3. Section 12208 is added to the Revenue and Taxation Code, to read:

12208. (a) There shall be allowed as a credit against the amount of tax, as defined in Section 28 of Article XIII of the California Constitution, an amount equal to the amount of the gross premiums tax due from the insurer on account of pilot project insurance for previously uninsured motorists.

(b) As used in this section "pilot project insurance for previously uninsured motorists" means motor vehicle liability insurance issued by an insurer under Article 5.5 (commencing with Section 11629.7) or Article 5.6 (commencing with Section 11629.9) of Chapter 1 of Part 3 of Division 2 of the Insurance Code, with respect to an insured who, at the time of the issuance, owned or operated a motor vehicle

without proof of financial responsibility as defined in Section 16020 of the Vehicle Code, and any renewal of that insurance.

SEC. 4. Section 3 of this act shall become operative only if SB 527 and SB 171 of the 1999–2000 Regular Session are also enacted and become effective on or before January 1, 2000.

CHAPTER 809

An act to add Sections 7934, 7935, 7936, 7937, 7938, 7939, and 7940 to the Public Utilities Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 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 Consumer Area Code Relief Act of 1999.

SEC. 2. Section 7934 is added to the Public Utilities Code, to read:

7934. The Legislature finds and declares all of the following:

(a) The number of area codes in this state has more than doubled since 1991.

(b) The proliferation of area codes has caused undue hardship on citizens of this state, who have begun to be forced into new area codes after years of having the same telephone number.

(c) That proliferation has substantially increased costs to businesses, individuals, and government agencies.

(d) New area codes require the replacement of business cards and letterhead stationery, and companies must use employee time contacting their customers to ensure that those customers are able to continue to reach the affected company.

(e) The proliferation of area codes has also reduced worker productivity as employees begin using new and unfamiliar area codes.

(f) It is the policy of the Legislature that existing area codes should be preserved for as long as possible.

(g) It is the further policy of the Legislature that the hardship currently experienced by telecommunications customers as a result of the creation of new area codes should be alleviated.

(h) For all of the reasons stated above, it is necessary for the commission, as a public agency, to take all possible measures to protect area codes as a public resource, stop area code proliferation, and review their existing practice of establishing new area code regions and the creation of area code overlays.

SEC. 3. Section 7935 is added to the Public Utilities Code, to read:

7935. (a) The commission shall develop and implement any measures it determines to be available for telephone corporations that possess prefixes to efficiently allocate telephone numbers within those prefixes. The commission shall consider the cost effectiveness of these measures before requiring implementation. Among the measures the commission shall consider are rate center consolidation, allocation of numbers in blocks smaller than 10,000, and unassigned number porting.

(b) For the purpose of this section, in accordance with the North American Numbering Plan, a telephone number consists of a three digit area code or number plan area (NPA), a three digit prefix or NXX code, and a four digit line number.

SEC. 4. Section 7936 is added to the Public Utilities Code, to read:

7936. The commission shall direct the North American Numbering Plan Administrator to obtain utilization data for any area code for which a relief plan is proposed, prior to adopting a plan for, or setting a date for, relief.

SEC. 5. Section 7937 is added to the Public Utilities Code, to read:

7937. (a) On or before March 1, 2000, the commission shall request from each telephone corporation doing business in this state that possesses one or more telephone number prefixes, or a portion thereof, the specific telephone numbers and the quantities within the possession of the provider, both in use and not in use. The commission, for the purpose of this section, shall define the terms "in use" and "not in use." The commission shall determine the reporting requirements for the information provided to the commission pursuant to Section 7940.

(b) Notwithstanding Section 7550.5 of the Government Code, the commission shall use the information obtained pursuant to subdivision (a) and any other information required by the commission, to prepare and submit to the Legislature, on or before, July 1, 2001, a study of telecommunications industry use rates.

SEC. 6. Section 7938 is added to the Public Utilities Code, to read:

7938. The commission shall require, as an interim measure until the commission develops procedures for number pooling or adopts utilization standards, that number assignments made by telephone corporations to their customers shall be made first from prefixes that are more than 25 percent in use. A telephone corporation may assign numbers from prefixes with less than 25 percent use only to the extent necessary, if numbers from prefixes that are more than 25 percent in use are not otherwise available.

SEC. 7. Section 7939 is added to the Public Utilities Code, to read:

7939. (a) If the commission or an authorized federal agency establishes a process to ensure that telephone numbers can be allocated in blocks smaller than 10,000, the commission shall require that a telephone corporation return to the North American Numbering Plan Administrator blocks of telephone numbers for reassignment, in a quantity determined by the commission.

(b) The commission shall direct the North American Numbering Plan Administrator to seek the return of blocks of numbers smaller than 10,000 not in use. The commission, for purposes of this section, shall define "not in use."

SEC. 8. Section 7940 is added to the Public Utilities Code, to read:

7940. A telephone corporation doing business in this state that possesses one or more telephone number prefixes, or portions thereof, shall provide to the commission or its agent, upon request, use information pertaining to both those prefixes in use and those prefixes not in use, according to any schedule established by the commission.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address as soon as possible the rapid proliferation of new area codes, including the imposition of planned area code overlays, which causes undue hardship to the citizens of this state, it is necessary that this act take effect immediately.

CHAPTER 810

An act to add and repeal Section 1011.7 of the Military and Veterans Code, relating to veterans.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1011.7 is added to the Military and Veterans Code, to read:

1011.7. (a) There is hereby created a Governor's Commission on Veterans Homes to advise the Governor and the Legislature on the establishment of veterans homes in California.

(b) The commission shall consist of 12 members as follows:

(1) A member of the Veterans of Foreign Wars, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the Veterans of Foreign Wars.

(2) A member of the American Legion, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the American Legion.

(3) A member of the Disabled American Veterans, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the Disabled American Veterans.

(4) A member of the AmVets, appointed by the Governor from a list of three names submitted to the Governor by the Commander of the AmVets.

(5) Three veterans, as defined by Section 980, appointed by the Governor.

(6) Two members appointed by the Speaker of the Assembly, one of whom shall be a veteran, as defined by Section 980, and one of whom shall serve as an ex officio, nonvoting member.

(7) Two members appointed by the Senate Committee on Rules, one of whom shall be a veteran, as defined by Section 980, and one of whom shall serve as an ex officio, nonvoting member.

(8) The Secretary of Veterans Affairs or his or her designee.

(c) (1) In making appointments pursuant to paragraphs (1) to (4), inclusive, of subdivision (b), the Governor shall consult with the leadership of the veterans organizations specified in those paragraphs.

(2) Notwithstanding any other provision of law, gubernatorial appointments made pursuant to subdivision (b) shall not be subject to the approval of the Senate.

(d) The Governor shall select one of the members to serve as chairperson.

(e) The commission shall hold a minimum of four public meetings at times and places as it shall determine.

(f) (1) Each member shall receive, for each day's attendance at each meeting of the commission, a per diem of fifty dollars ($50) and shall receive the same per diem for each day spent on official duties assigned by the commission.

(2) Each member shall be reimbursed for his or her necessary traveling and other expenses incurred in the performance of his or her official duties.

State agencies, including those identified in subdivision (j), may pay a portion of the commission's expenses.

(g) (1) The commission shall establish findings and make recommendations to the Governor and the Legislature on the establishment of veterans homes in California. The findings and recommendations may include, but need not be limited to, the following matters:

(A) Possible sites for one or more state veterans homes. This recommendation shall give consideration to the availability of federal surplus property and any property available for no cost, or at less than market value, from public or private sources, and to a competitive site-selection process that would compare the relative merits of all available sites.

(B) Selection of a site specifically for the treatment of veterans who suffer from Alzheimer's disease or other diseases causing dementia. Preference should be given to a site with access to an existing medical teaching or research facility.

(C) The scope and level of health care, residential care, and recreational facilities, and other services and amenities to be provided at each home.

(D) The number of sites to be established and the resident population to be served at each site, including a description of the type, size, and projected population of each of the residential components of the home, including, but not limited to, skilled nursing care beds, intermediate care beds, domiciliary care, independent living facilities, and day care facilities.

(E) Estimates of design and planning costs, land acquisition costs, capital construction costs, and annual operating costs of each home that would be associated with various modes of construction.

(F) Financing options for the development and construction of a home on one or more sites that shall include, but not be limited to, financial assistance available through the federal Department of Veterans Affairs State Home Grants Program.

(G) The management of each home by state or private administration.

(2) For the purposes of paragraph (1), the commission shall hear testimony from interested citizens concerning the needs of veterans in California.

(h) Notwithstanding Section 7550.5 of the Government Code, the commission shall report to the Governor and the Legislature on or before October 1, 2001, concerning its findings and recommendations, as specified in subdivision (g), for the development and construction activities associated with veterans homes in California.

(i) (1) Any new veterans homes sites recommended by the Governor's Commission on Veterans Homes shall be in addition to, and any new homes shall be built after, those listed in Section 1011.

(2) Priority for new veterans home sites shall be in areas that have been underserved, specifically in the San Joaquin Valley and the Los Angeles Basin.

(j) State agencies, including, but not limited to, the Governor's Office of Planning and Research, the Department of Veterans Affairs, the office of the Treasurer, and the Project Management Branch within the Real Estate Services Division of the Department of General Services, may provide staff assistance to the commission upon its request.

(k) The commission may solicit and accept private donations, through the secretary, from any person, association, or entity interested in veterans benefits.

(*l*) 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.

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CHAPTER 811

An act to amend and supplement the Budget Act of 1999 (Chapter 50, Statutes of 1999), relating to state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

I am signing Assembly Bill No. 756, however I am reducing the following item:

Item 3790-302-001—for relocation and restoration of Stilwell Hall in Monterey County, and for the stabilization and restoration of the Copperopolis Armory in Calaveras County. I reduce this item from $3,020,000 to $3,010,000 by deleting the funding for Copperopolis Armory.

This appropriation inappropriately diverts funding intended for high priority state park cultural heritage projects to a local project. This project should be funded from local resources.

The other budgetary augmentations and reallocations provided for in this bill are appropriate expenditures and have my full support.

GRAY DAVIS, Governor

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

SECTION 1. The appropriations made by this act are in augmentation of the appropriations made in Section 2.00 of the Budget Act of 1999 (Ch. 50, Stats. 1999) and are subject to the provisions of that act, as appropriate, including, as applicable, the provisions of that act that apply to the items of appropriation that are augmented by this act. The references in this act to item numbers refer to items of appropriation in Section 2.00 of the Budget Act of 1999.

SEC. 2. Of the amount appropriated for cultural heritage projects in Item 3790-002-0001, three million ten thousand dollars ($3,010,000) is hereby reappropriated in augmentation of the appropriation made in Item 3790-302-0001, to be used by the Department of Parks and Recreation for relocation and restoration of Stilwell Hall in Monterey County to preserve this important cultural resource, and for stabilization and restoration of the Copperopolis Armory in Calaveras County to preserve this important cultural resource in accordance with the following schedule and provisions:

Schedule:

(2.5) 90.D8.100—Stilwell Hall at Fort Ord: Relocation and Restoration	3,010,000
(2.7) Copperopolis Armory: Stabilization and Restoration	10,000

Provisions:

2. Expenditure of funds appropriated in Schedule (2.5) is contingent upon a minimum federal match of $2,990,000 and documentation demonstrating that the balance of funding necessary to complete the project has been provided from nonstate sources.
3. The funds appropriated in Schedule (2.5) of this item are available for encumbrance for capital outlay, local assistance, or payment to the federal government through the 2001–02 fiscal year.

SEC. 3. Eight thousand dollars ($8,000) is hereby appropriated from the General Fund in augmentation of the appropriation made in Item 3600-102-0001, to be used by the Department of Fish and Game, for the New Hogan Lake Conservancy in Calaveras County, in accordance with the following schedule and provisions:

Schedule:
(2) 20.01–Calaveras County: New Hogan Lake Conservancy 8,000

SEC. 4. The sum of two hundred thirty-five thousand dollars ($235,000) is hereby appropriated from the General Fund to the Department of Water Resources to pay the Reclamation Board's share of preconstruction engineering and design costs relating to the Success Reservoir Enlargement Project.

SEC. 5. (a) The amount appropriated in Schedule (b) of Item 3860-101-0001 is hereby reappropriated to the Department of Water Resources for expenditure without regard to fiscal years for the following local assistance:

(1) Three million dollars ($3,000,000) shall be used for the delta levee maintenance program under Part 9 (commencing with Section 12980) of Division 6 of the Water Code.

(2) Three million dollars ($3,000,000) shall be used for special flood control projects under Chapter 2 (commencing with Section 12310) of Part 4.8 of Division 6 of the Water Code, subsidence studies and monitoring, and costs of administration for flood protection projects on Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb Islands and at other locations in the Sacramento-San Joaquin Delta, as described in Section 12220 of the Water Code.

(b) Of the funds reappropriated pursuant to subdivision (a), not more than 5 percent may be expended to repair levee road pavement if the damage is attributable to flood control maintenance.

(c) Any funds that are made available under subdivision (a) may be used to reimburse local agencies for the state's share of costs for eligible projects completed on or after July 1, 1998.

(d) The expenditure of funds reappropriated by this section is subject to Chapter 1.5 (commencing with Section 12306) of Part 4.8 of Division 6 of the Water Code.

(e) The funds reappropriated pursuant to this section may only be expended consistent with the procedures prescribed in Section 78543, 78544, and 78545 of the Water 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 to make certain necessary augmentations to the appropriations made by the Budget Act of 1999 for support of state government for the 1999–2000 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 812

An act to amend Sections 15399.10, 15399.11, 15399.14, and 15399.17 of, to amend and renumber Section 15399.19 of, to add Sections 15399.15, 15399.15.1, and 15399.15.2 to, and to add and repeal Section 65964 of, the Government Code, to amend Sections 25288, 25299, 25299.37.1, 25299.51, 25299.52, 25299.57, 25299.59, 25299.81, 25299.94, and 25299.99.2 of, and to add Sections 25284.1, 25292.4, 25299.18, 25299.38.1, 25299.99.3, 43013.1, and 43013.3 to, and to repeal and add Section 43830.8 of, the Health and Safety Code, to add Section 25310.5 to, and to add and repeal Section 21178 of, the Public Resources Code, and to amend Section 13752 of the Water Code, relating to pollution.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 15399.10 of the Government Code is amended to read:

15399.10. For purposes of this chapter, the following terms have the following meaning:

(a) "Agency" means the Trade and Commerce Agency.

(b) "Board" means the State Water Resources Control Board.

(c) "Loan applicant" means a small business that applies to the agency for a loan pursuant to this chapter.

(d) "Grant applicant" means a small business that applies to the agency for a grant pursuant to this chapter.

(e) "Tank" means an underground storage tank, as defined in Section 25281 of the Health and Safety Code, used for the purpose of storing petroleum, as defined in Section 25299.22 of the Health and Safety Code. "Tank" also includes under-dispenser containment systems, spill containment systems, enhanced monitoring and control systems, and vapor recovery systems and dispensers connected to the underground piping and the underground storage tank.

(f) "Project tank" means one or more tanks that would be upgraded, replaced, or removed with loan or grant funds.

SEC. 2. Section 15399.11 of the Government Code is amended to read:

15399.11. The agency shall conduct a loan program pursuant to this chapter, to assist small businesses in upgrading, replacing, or removing tanks to meet applicable local, state, or federal standards. Loan funds may also be used for corrective actions, as defined in Section 25299.14 of the Health and Safety Code. The agency shall also conduct a grant program, pursuant to this chapter, to assist small businesses to comply with Sections 25284.1 and 25292.4 of the Health and Safety Code.

SEC. 3. Section 15399.14 of the Government Code is amended to read:

15399.14. (a) The minimum amount that the agency may loan an applicant is ten thousand dollars ($10,000), and the maximum amount that the agency may loan an applicant is seven hundred fifty thousand dollars ($750,000).

(b) The term of the loan shall be for a maximum of 20 years if secured by real property, and for 10 years if not secured by real property. The interest rate for loans shall be set at the rate earned by the Surplus Money Investment Fund at the time of the loan commitment.

(c) Loan funds may be used to finance up to 100 percent of the costs necessary to upgrade, remove, or replace project tanks, including corrective actions, to meet applicable local, state, or federal standards, including, but not limited to, any design, construction, monitoring, operation, or maintenance requirements adopted pursuant to Sections 25284.1 and 25292.4 of the Health and Safety Code.

(d) The repeal of this chapter pursuant to Section 15399.21 shall not extinguish a loan obligation and shall not impair the deed of trust or other collateral made pursuant to this chapter or the authority of the state to pursue appropriate action for collection.

(e) The agency may charge a loan fee to loan applicants of up to 2 percent of the requested loan amount. The loan fee shall be deposited in the Petroleum Financing Collection Account.

SEC. 4. Section 15399.15 is added to the Government Code, to read:

15399.15. (a) The agency shall make grant funds available from the Petroleum Underground Storage Tank Financing Account to eligible grant applicants who meet all of the following eligibility requirements:

(1) The grant applicant is a small business, pursuant to the following requirements:

(A) The grant applicant meets the conditions for a small business as defined in Section 632 of Title 15 of the United States Code, and in the federal regulations adopted to implement that section, as specified in Section 121.2 of Title 13 of the Code of Federal Regulations.

(B) The grant applicant employs fewer than 20 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

(2) The principal office of the grant applicant is domiciled in the state, and the officers of the grant applicant are domiciled in this state.

(3) The grant applicant, the applicant's family, or an affiliated entity, has owned or operated the project tank since January 1, 1997.

(4) All tanks owned and operated by the grant applicant are subject to compliance with Chapter 6.7 (commencing with Section 25280) of Division 20 of the Health and Safety Code, and the regulations adopted pursuant to that chapter.

(5) The facility where the project tank is located has sold at retail less than 900,000 gallons of gasoline annually for each of the two years preceding the submission of the grant application. The numbers of gallons sold shall be based upon taxable sales figures provided to the State Board of Equalization for that facility.

(6) The grant applicant owns or operates a tank that is in compliance with Section 25291 of the Health and Safety Code, or subdivisions (d) and (e) of Section 25292, of the Health and Safety Code, and the regulations adopted to implement those sections.

(7) The grant applicant has acquired debt, or is currently making payments on a preexisting loan, to upgrade the grant applicant's underground storage tanks to meet state and federal requirements prior to the December 22, 1998, deadline.

(8) The facility where the project tank is located was legally in business retailing gasoline after January 1, 1999.

(b) Grant funds may only be used to pay the costs necessary to comply with the requirements of Section 25284.1 or 25292.4, or both, of the Health and Safety Code.

(c) If the total amount of grant requests by eligible grant applicants to the agency pursuant to this section exceed, or are anticipated to exceed, the amount in the Petroleum Underground Storage Tank Financing Account, the agency may adopt a priority ranking list to award grants based upon the level of demonstrated financial hardship of the eligible grant applicant, or the relative

impact upon the local community where the project tank is located if the claim is denied.

SEC. 5. Section 15399.15.1 is added to the Government Code, to read:

15399.15.1. A complete grant application shall include all of the following information:

(a) Evidence of eligibility.

(b) Financial and legal documents necessary to demonstrate the applicant's financial hardship, if any. The agency shall develop a standard list of documents required of all applicants, and may also request from individual applicants additional financial and legal documents not provided on this list.

(c) An explanation of the actions the applicant is required to take comply with the requirements of Sections 25284.1 and 25292.4 of the Health and Safety Code.

(d) A detailed cost estimate of the actions that are required to be completed for the project tanks to comply with applicable local, state, or federal standards.

(e) Any other information that the department determines to be necessary to include in an application form.

SEC. 6. Section 15399.15.2 is added to the Government Code, to read:

15399.15.2. (a) (1) The minimum amount that the agency may grant an applicant is ten thousand dollars ($10,000), and the maximum amount that the agency may grant an applicant is fifty thousand dollars ($50,000).

(b) Grant funds may be used to finance up to 100 percent of the costs necessary to upgrade project tanks to comply with Sections 25284.1 and 25292.4 of the Health and Safety Code. No person or entity is eligible to receive more than fifty thousand dollars ($50,000) in grant funds pursuant to this chapter.

SEC. 7. Section 15399.17 of the Government Code is amended to read:

15399.17. (a) The Petroleum Underground Storage Tank Financing Account is hereby created in the General Fund. The Petroleum Underground Storage Tank Financing Account is created for both of the following purposes:

(1) Receiving federal, state, and local money.

(2) Receiving repayments of loans and interest and late fees on those accounts.

(b) (1) Notwithstanding Section 13340, the funds deposited into the account are hereby continuously appropriated to the agency without regard to fiscal year for making loans pursuant to this chapter.

(2) The funds deposited in the account may be expended by the agency to make grants pursuant to this chapter, upon appropriation by the Legislature.

(c) The agency shall annually make available not more than 33 percent of the available funds from the account for the purposes of providing grants pursuant to this chapter.

(d) Notwithstanding Section 16305.7, all interest or other increments resulting from the investment of the funds in the Petroleum Underground Storage Tank Financing Account pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 shall be deposited in the Petroleum Underground Storage Tank Financing Account.

(e) All interest accruing on interest payments from loan applicants or interest earned on the funds in the Petroleum Underground Storage Tank Financing Account shall be deposited in a subaccount of the account.

SEC. 8. Section 15399.19 of the Government Code, as added by Section 6 of Chapter 814 of the Statutes of 1995, is amended and renumbered to read:

15399.19.1. (a) On or before January 1, 1997, and on or before January 1 annually thereafter, the agency shall submit an annual report to the Legislature concerning the performance of the grant and loan program established by this chapter, including the number and size of grants and loans made, characteristics of grant and loan recipients, the number of underground storage tanks removed and upgraded as a result of the grant and loan program, and the amount of money spent on administering the program. Copies of the report shall be submitted to the appropriate fiscal and policy committees of the Legislature and, upon request, to individual Members of the Legislature.

(b) Notwithstanding Section 7550.5 of the Government Code, on or before April 1, 2001, the agency shall submit a report to the Legislature detailing the status of the grant program, the remaining needs, if any, of eligible candidates for financial assistance from the account, and any suggested statutory changes so that the account may better serve affected small businesses.

SEC. 9. Section 65964 is added to the Government Code, to read:

65964. (a) For the purposes of this section, the following definitions apply:

(1) "Permitting agency" means a city or county, or an air pollution control district, as defined in Section 65926, authorized to issue a permit or other preconstruction authorization to construct a Phase 3 reformulated gasoline project.

(2) "Phase 3 Reformulated Gasoline Project" means a project to construct or modify a facility consisting of processing units or other equipment necessary to produce California Phase 3 Reformulated Gasoline, as required to be produced pursuant to paragraph 6 of Executive Order D-5-99, and that is located within the physical boundaries of an existing oil refinery or terminal.

(b) A permitting agency for a phase 3 reformulated gasoline project shall undertake all reasonable efforts to expedite action on

the permit or other authorization with the objective of acting upon the permit or other authorization within 12 months of receiving a completed application for a permit or other authorization, if the permit applicant has made reasonable efforts to cooperate with the permitting agency in expediting the processing of the permit or other authorization.

(c) The permitting agency, or a permit applicant with the concurrence of the permitting agency, may request the State Air Resources Board or the State Energy Resources Conservation and Development Commission, or both agencies, to provide appropriate assistance to the permitting agency to assist that agency in achieving the objective of acting upon the permit or other authorization within 12 months.

(d) Upon receipt of a request made pursuant to subdivision (c), the State Air Resources Board or the State Energy Resources Conservation and Development Commission, or both agencies, shall provide appropriate assistance to a permitting agency with the objective of acting upon a permit for a phase 3 reformulated gasoline project within 12 months.

(e) Nothing in this section shall affect any of the following:

(1) The authority or obligation of a public agency under any law, regulation, or ordinance.

(2) The ability of a public agency to hold a public hearing upon, to comment upon, or to impose conditions upon, a reformulated gasoline project.

(3) The rights or remedies of any party pursuant to any law, regulation, or ordinance.

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

SEC. 10. Section 25284.1 is added to the Health and Safety Code, to read:

25284.1. (a) The board shall take all of the following actions with regard to the prevention of unauthorized releases from petroleum underground storage tanks:

(1) On or before June 1, 2000, initiate a field-based research program to quantify the probability and environmental significance of releases from underground storage tank systems meeting the 1998 upgrade requirements specified in subdivision (c) of Section 25284. The research program shall do all of the following:

(A) Seek to identify the source and causes of releases and any deficiencies in leak detection systems.

(B) Include single-walled, double-walled, and hybrid tank systems, and avoid bias toward known leaking underground storage tank systems by including a statistically valid sample of all operating underground storage tank systems.

(C) Include peer review.

(2) Complete the research program on or before June 1, 2002.

(3) Use the results of the research program to develop appropriate changes in design, construction, monitoring, operation, and maintenance requirements for tank systems.

(4) On or before January 1, 2001, adopt regulations to do all of the following:

(A) (i) Require underground storage tank owners, operators, service technicians, installers, and inspectors to meet minimum industry-established training standards and require tank facilities to be operated in a manner consistent with industry-established best management practices.

(ii) The board shall implement an outreach effort to educate small business owners or operators on the importance of the regulations adopted pursuant to this subparagraph.

(B) Require testing of the secondary containment components, including under-dispenser and pump turbine containment components, upon initial installation of a secondary containment component and periodically thereafter, to ensure that the system is capable of containing releases from the primary containment until a release is detected and cleaned up. The board shall consult with the petroleum industry and local government to assess the appropriate test or tests that would comply with this subparagraph.

(C) Require annual testing of release detection sensors and alarms, including under-dispenser and pump turbine containment sensors and alarms. The board shall consult with the petroleum industry and local government to assess the appropriate test or tests that would comply with this subparagraph.

(5) (A) Require an owner or operator of an underground storage tank installed after July 1, 1987, if a tank is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping data base, to have the underground storage tank system fitted, on or before July 1, 2001, with under-dispenser containment or a spill containment or control system that is approved by the board as capable of containing any accidental release.

(B) Require all underground storage tanks installed after January 1, 2000, to have the tank system fitted with under-dispenser containment or a spill containment system or control system to meet the requirements of subparagraph (A).

(C) Require an owner or operator of an underground storage tank that is not otherwise subject to subparagraph (A), and not subject to subparagraph (B), to have the underground storage tank system fitted to meet the requirements of subparagraph (A), on or before December 31, 2003.

(D) On and after January 1, 2002, no person shall install, repair, maintain, or calibrate monitoring equipment for an underground storage tank unless that person satisfies both of the following requirements:

(i) The person has fulfilled training standards identified by the board in regulations adopted pursuant to this section.

(ii) The person possesses a Class "A" General Engineering Contractor License, C-10 Electrical Contractor License, C-34 Pipeline Contractor License, C-36 Plumbing Contractor License, or C-61 (D40) Limited Specialty Service Station Equipment and Maintenance Contractor License issued by the Contractors' State License Board.

(E) Loans and grants for the installation of under-dispenser containment or a spill containment or control system shall be made available pursuant to Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code.

(6) Convene a panel of local agency and regional board representatives to review existing enforcement authority and procedures and to advise the board of any changes that are needed to enable local agencies to take adequate enforcement action against owners and operators of noncompliant underground storage tank facilities. The panel shall make its recommendations to the board on or before September 30, 2001. Based on the recommendations of the panel, the board shall also establish effective enforcement procedures in cases involving fraud.

(b) On or before July 1, 2001, the Contractors State License Board, in consultation with the board, the petroleum industry, air pollution control districts, air quality management districts, and local government, shall review its requirements for petroleum underground storage tank system installation and removal contractors and make changes, where appropriate, to ensure these contractors are qualified.

SEC. 11. Section 25288 of the Health and Safety Code is amended to read:

25288. (a) The local agency shall inspect every underground tank system within its jurisdiction at least once every year. The purpose of the inspection is to determine whether the tank system complies with the applicable requirements of this chapter and the regulations adopted by the board pursuant to Section 25299.3, including the design and construction standards of Section 25291 or 25292, whichever is applicable, whether the operator has monitored and tested the tank system as required by the permit, and whether the tank system is in a safe operating condition.

(b) After an inspection conducted pursuant to subdivision (a), the local agency shall prepare a compliance report detailing the inspection and shall send a copy of this report to the permitholder and the owner or operator, if the owner or operator is not the permitholder. Any report prepared pursuant to this section shall be consolidated into any other inspection reports required pursuant to Chapter 6.11 (commencing with Section 25404), the requirements listed in subdivision (c) of Section 25404, and the regulations adopted to implement the requirements listed in subdivision (c) of Section 25404.

(c) In lieu of the annual local agency inspections, the local agency may require the permitholder to employ a special inspector to conduct the annual inspection. The local agency shall supply the permitholder with a list of at least three special inspectors that are qualified to conduct the inspection. The permitholder shall employ a special inspector from the list provided by the local agency. The special inspector's authority shall be the same as that of the local agency as set forth in subdivision (a).

(d) Within 60 days after receiving a compliance report or special inspection report prepared in accordance with subdivision (b) or (c), respectively, the permitholder shall file with the local agency a plan to implement all recommendations contained in the compliance report or shall demonstrate, to the satisfaction of the local agency, why these recommendations should not be implemented. Any corrective action conducted pursuant to the recommendations in the report shall be taken pursuant to Sections 25299.36 and 25299.37.

SEC. 12. Section 25292.4 is added to the Health and Safety Code, to read:

25292.4. (a) On and after November 1, 2000, an owner or operator of an underground storage tank system with a single-walled component that is located within 1,000 feet of a public drinking water well, as identified pursuant to the state G1S mapping data base, shall implement a program of enhanced leak detection or monitoring, in accordance with the regulations adopted by the board pursuant to subdivision (c).

(b) The board shall notify the owner and operator of each underground storage tank system that is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping data base, of the owner and operators' responsibilities pursuant to this section. The board shall provide each local agency with a list of tank systems within the local agency's jurisdiction that are located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping data base.

(c) The board shall adopt regulations to implement the enhanced leak detection and monitoring program required by subdivision (a). Before adopting these regulations, the board shall consult with the petroleum industry, local governments, environmental groups, and other interested parties to assess the appropriate technology and procedures to implement the enhanced leak detection or monitoring program required by subdivision (a). In adopting these regulations, the board shall consider existing leak detection technology and external monitoring techniques or procedures for underground storage tanks.

SEC. 13. Section 25299 of the Health and Safety Code is amended to read:

25299. (a) Any operator of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) for each underground

storage tank for each day of violation for any of the following violations:

(1) Operating an underground tank system which has not been issued a permit, in violation of this chapter.

(2) Violation of any of the applicable requirements of the permit issued for the operation of the underground tank system.

(3) Failure to maintain records, as required by this chapter.

(4) Failure to report an unauthorized release, as required by Sections 25294 and 25295.

(5) Failure to properly close an underground tank system, as required by Section 25298.

(6) Violation of any applicable requirement of this chapter or any requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(9) Tampering with or otherwise disabling automatic leak detection devices or alarms.

(b) Any owner of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) per day for each underground storage tank, for each day of violation, for any of the following violations:

(1) Failure to obtain a permit as specified by this chapter.

(2) Failure to repair or upgrade an underground tank system in accordance with this chapter.

(3) Abandonment or improper closure of any underground tank system subject to this chapter.

(4) Knowing failure to take reasonable and necessary steps to assure compliance with this chapter by the operator of an underground tank system.

(5) Violation of any applicable requirement of the permit issued for operation of the underground tank system.

(6) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(c) Any person who intentionally fails to notify the board or the local agency when required to do so by this chapter or who submits false information in a permit application, amendment, or renewal, pursuant to Section 25286, is liable for a civil penalty of not more than

five thousand dollars ($5,000) for each underground storage tank for which notification is not given or false information is submitted.

(d) (1) Any person who falsifies any monitoring records required by this chapter, or knowingly fails to report an unauthorized release, shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) or more than ten thousand dollars ($10,000), by imprisonment in the county jail for not to exceed one year, or by both that fine and imprisonment.

(2) Any person who intentionally disables or tampers with an automatic leak detection system in a manner that would prevent the automatic leak detection system from detecting a leak or alerting the owner or operator of the leak, shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) or more than ten thousand dollars ($10,000), by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(e) In determining both the civil and criminal penalties imposed pursuant to this section, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the person who holds the permit.

(f) Each civil penalty or criminal fine imposed pursuant to this section for any separate violation shall be separate, and in addition to, any other civil penalty or criminal fine imposed pursuant to this section or any other provision of law, and shall be paid to the treasury of the local agency or state, whichever is represented by the office of the city attorney, district attorney, or Attorney General bringing the action. All penalties or fines collected on behalf of the board or a regional board by the Attorney General shall be deposited in the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund, and are available for expenditure by the board, upon appropriation, pursuant to Section 13441 of the Water Code.

(g) Paragraph (9) of subdivision (a) does not prohibit the owner or operator of an underground storage tank, or his or her designee, from maintaining, repairing, or replacing automatic leak detection devices or alarms associated with that tank.

SEC. 14. Section 29299.18 is added to the Health and Safety Code, to read:

25299.18. "MTBE" means methyl tertiary-butyl ether.

SEC. 15. Section 25299.37.1 of the Health and Safety Code is amended to read:

25299.37.1. (a) No closure letter pursuant to this chapter shall be issued unless the soil or groundwater, or both, where applicable, at the site have been tested for MTBE and the results of that testing are known to the regional board.

(b) Subdivision (a) does not apply to a closure letter for a tank case for which the board, a regional board, or local agency determines that the tank has only contained diesel or jet fuel.

SEC. 16. Section 25299.38.1 is added to the Health and Safety Code, to read:

25299.38.1. (a) The board, in consultation with the State Department of Health Services, shall develop guidelines for the investigation and cleanup of MTBE and other ether-based oxygenates in groundwater. The guidelines shall include procedures for determining, to the extent practicable, whether the contamination associated with an unauthorized release of MTBE is from the tank system prior to the system's most recent upgrade or replacement or if the contamination is from an unauthorized release from the current tank system.

(b) The board, in consultation with the State Department of Health Services, shall develop appropriate cleanup standards for contamination associated with a release of MTBE.

SEC. 17. Section 25299.50 of the Health and Safety Code is amended to read:

25299.50. (a) The Underground Storage Tank Cleanup Fund is hereby created in the State Treasury. The money in the fund may be expended by the board, upon appropriation by the Legislature, for purposes of this chapter. From time to time, the board may modify existing accounts or create accounts in the fund or other funds administered by the board, which the board determines are appropriate or necessary for proper administration of this chapter.

(b) Except for funds transferred to the Drinking Water Treatment and Research Fund created pursuant to subdivision (c) of Section 116367, all of the following amounts shall be deposited in the fund:

(1) Money appropriated by the Legislature for deposit in the fund.

(2) The fees, interest, and penalties collected pursuant to Article 5 (commencing with Section 25299.40).

(3) Notwithstanding Section 16475 of the Government Code, any interest earned upon the money deposited in the fund.

(4) Any money recovered by the fund pursuant to Section 25299.70.

(5) Any civil penalties collected by the board or regional board pursuant to Section 25299.76.

(c) (1) Notwithstanding subdivision (a), any funds appropriated by the Legislature in the annual Budget Act for payment of a claim for the costs of a corrective action in response to an unauthorized release, that are encumbered for expenditure for a corrective action pursuant to a letter of credit issued by the board pursuant to subdivision (e) of Section 25299.57, but are subsequently not expended for that corrective action claim, may be reallocated by the board for payment of other claims for corrective action pursuant to Section 25299.57.

(2) Notwithstanding Section 7550.5 of the Government Code, the board shall report at least once every three months on the implementation of this subdivision to the Senate Committee on Budget and Fiscal Review, the Senate Committee on Environmental Quality, the Assembly Committee on Budget, and the Assembly Committee on Environmental Safety and Toxic Materials, or to any successor committee, and to the Director of Finance.

SEC. 18. 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 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 five hundred thousand dollars ($1,500,000) 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. 19. 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 that 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 that meets that definition of small business, but who is domiciled or has its principal office outside of the state, shall be classified in this category if the owner or operator otherwise meets 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 that 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 that are either of the following:

(A) The owner or operator owns and operates a business that 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 a tank for which the claim is being submitted is 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 January 1, 2000, 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. 20. 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 five hundred thousand dollars ($1,500,000) 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. 21. 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 five hundred thousand dollars ($1,500,000), less the minimum level of financial responsibility specified in Section 25299.32, for a claim arising from the same event or occurrence. If a claim exceeds one million dollars ($1,000,000) for an occurrence, the board may only reimburse costs submitted pursuant to Section 25299.57 for those costs in excess of one million dollars ($1,000,000).

(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. 22. Section 25299.81 of the Health and Safety Code is amended to read:

25299.81. (a) Except as provided in subdivisions (b) and (c), this chapter shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2011, deletes or extends that date.

(b) Notwithstanding subdivision (a), Article 1 (commencing with Section 25299.10), Article 2 (commencing with Section 25299.11), and Article 4 (commencing with Section 25299.36) shall not be repealed and shall remain in effect on January 1, 2011.

(c) The repeal of certain portions of this chapter does not terminate any of the following rights, obligations, or authorities, or any provision necessary to carry out these rights and obligations:

(1) The filing and payment of claims against the fund, until the moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid.

(2) The repayment of loans, outstanding as of January 1, 2011, due and payable to the board under the terms of Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code.

(3) The resolution of any cost recovery action.

(d) Notwithstanding Section 7550.5 of the Government Code, the board shall annually, on or before September 30, prepare and submit a report to the Legislature which describes the status of the fund and sets forth recommendations for legislative changes to improve the efficiency of the program established pursuant to this chapter, with a special emphasis on expediting environmental cleanup and the distribution of money from the fund, including alternative methods for the distribution of that money.

SEC. 23. Section 25299.94 of the Health and Safety Code is amended to read:

25299.94. (a) The board may pay the cost of corrective actions and third-party compensation claims that are submitted as part of a joint claim and which exceed the amount specified in subdivision (b), but do not exceed an amount equal to one million five hundred thousand dollars ($1,500,000) per occurrence, for which an owner or operator named in the joint claim is eligible for reimbursement under this chapter. If a claim from a contributing site exceeds one million dollars ($1,000,000) for an occurrence, the board may only reimburse costs submitted pursuant to Section 25299.57 for those costs in excess of one million dollars ($1,000,000).

(b) For each joint claim, the board may only pay for the costs of corrective action and third-party compensation claims that exceed the aggregate of the levels of financial responsibility required

pursuant to Section 25299.32 for each owner or operator named in the joint claim.

(c) The costs of corrective action determined eligible for reimbursement shall be paid before third-party compensation claims.

(d) Except as provided in paragraph (1) of subdivision (e), reimbursement for costs of corrective action is limited to costs incurred by the joint claimants after executing an agreement under paragraph (7) of subdivision (a) of Section 25299.93.

(e) Both of the following costs of corrective action incurred at a contributing site may be reimbursed in accordance with subdivision (f):

(1) Costs incurred by an owner or operator before executing an agreement described in paragraph (7) of subdivision (a) of Section 25299.93.

(2) Costs relating to unauthorized releases that do not contribute to the commingled plume, but which are included in the occurrence which is the subject of the joint claim.

(f) An owner or operator may seek reimbursement of costs described in subdivision (e) by doing either of the following:

(1) Including a payment request for those corrective action costs with the claim filed under this article.

(2) Filing a claim or maintaining an existing claim under Article 6 (commencing with Section 25299.50).

(g) Any reimbursement received pursuant to subdivision (f) and any amount excluded from the payment based on the amount of financial responsibility required to be maintained shall be applied toward the limitations prescribed in subdivision (a).

(h) The board shall not reimburse a claimant or joint claimant for any eligible costs for which the claimant or joint claimant has been, or will be, compensated by another party.

SEC. 24. Section 25299.99.2 of the Health and Safety Code is amended to read:

25299.99.2. This article, notwithstanding Section 25299.81, shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.

SEC. 25. Section 25299.99.3 is added to the Health and Safety Code, to read:

25299.99.3. In any fiscal year, if the department determines that less than two million dollars ($2,000,000) of unencumbered funds remain in the fund, it shall notify the board and the board shall transfer five million dollars ($5,000,000) from the Underground Storage Tank Cleanup Fund to the Drinking Water Treatment and Research Fund, to be expended for the purposes set forth in Section 116367, if a drinking water well has been contaminated with oxygenate and there is substantial evidence that the contamination was caused by a release from an underground storage tank.

SEC. 26. Section 43013.1 is added to the Health and Safety Code, to read:

43013.1. (a) The State Energy Resources Conservation and Development Commission, in consultation with, and the state board, shall develop a timetable for the removal of MTBE from gasoline at the earliest possible date. In developing the timetable, the commission and the state board shall consider studies conducted by the commission and should ensure adequate supply and availability of gasoline.

(b) The state board shall ensure that regulations for California Phase 3 Reformulated Gasoline (CaRFG3) adopted pursuant to Executive Order D-5-99 meet all of the following conditions:

(1) Maintain or improve upon emissions and air quality benefits achieved by California Phase 2 Reformulated Gasoline in California as of January 1, 1999, including emission reductions for all pollutants, including precursors, identified in the State Implementation Plan for ozone, and emission reductions in potency-weighted air toxics compounds.

(2) Provide additional flexibility to reduce or remove oxygen from motor vehicle fuel in compliance with the regulations adopted pursuant to subdivision (a).

(3) Are subject to a multimedia evaluation pursuant to Section 43830.8.

(c) On or before April 1, 2000, the State Water Resources Control Board, in consultation with the Department of Water Resources and the State Department of Health Services, shall identify areas of the state that are most vulnerable to groundwater contamination by MTBE or other ether-based oxygenates. The State Water Resources Control Board shall direct resources to those areas for protection and cleanup on a prioritized basis. Loans for upgrading, replacing, or removing tanks shall be made available pursuant to Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code. In identifying areas vulnerable to groundwater contamination, the State Water Resources Control Board shall consider criteria including, but not limited to, any one, or any combination of, the following:

(1) Hydrogeology.

(2) Soil composition.

(3) Density of underground storage tanks in relation to drinking water wells.

(4) Degree of dependence on groundwater for drinking water supplies.

SEC. 27. Section 43013.3 is added to the Health and Safety Code, to read:

43013.3. Notwithstanding Section 43013.1, the Secretary for Environmental Protection may prohibit the use of methyl tertiary-butyl ether (MTBE) in motor vehicle fuel prior to December 31, 2002, on a subregional basis in the Bay Area Air Basin,

or in any other air basin in the state, if the secretary finds and determines all of the following:

(a) That the removal of MTBE in motor vehicle fuel on a subregional basis will not cause or contribute to the basin being designated as a state or federal nonattainment area for one or more ambient air quality standards, including, but not limited to, state or federal ambient air standards for ambient ozone and carbon monoxide.

(b) That the removal of MTBE in motor vehicle fuel will not increase potency-weighted air toxic compounds, or violate one or more control measures adopted by the state board or a district pursuant to Chapter 3.5 (commencing with Section 39650) of Part 2.

(c) That the subregion is a vulnerable groundwater area as defined in Section 25292.4.

(d) That the removal of MTBE will not significantly affect the price or supply of gasoline in the subregion.

SEC. 28. Section 43830.8 of the Health and Safety Code is repealed.

SEC. 29. Section 43830.8 is added to the Health and Safety Code, to read:

43830.8. (a) The state board may not adopt any regulation that establishes a specification for motor vehicle fuel unless that regulation, and a multimedia evaluation conducted by affected agencies and coordinated by the state board, are reviewed by the California Environmental Policy Council established pursuant to subdivision (b) of Section 71017 of the Public Resources Code.

(b) As used in this section, "multimedia evaluation" means the identification and evaluation of any significant adverse impact on public health or the environment, including air, water, or soil, that may result from the production, use, or disposal of the motor vehicle fuel that may be used to meet the state board's motor vehicle fuel specifications.

(c) The evaluation shall be based on the best available scientific data, written comments submitted by any interested person, and information collected by the state board. At a minimum, the evaluation shall address impacts associated with both of the following:

(1) Emissions of air pollutants, including ozone forming compounds, particulate matter, toxic air contaminants, and greenhouse gases.

(2) Contamination of surface water, groundwater, and soil.

(d) The state board shall prepare a written summary of the multimedia evaluation, and shall submit the summary for external scientific peer review in accordance with Section 57004. The state board shall maintain, for public inspection, a record of any relevant materials from any state agencies and any written public comments on the multimedia evaluation. The state board shall submit the written summary, and the results of the peer review, to the California

Environmental Policy Council prior to the adoption of the proposed regulation.

(e) The California Environmental Policy Council shall complete its review of the multimedia review within 90 calendar days following notice from the state board of its intention to adopt a regulation subject to this section. If the council determines that any significant impact on public health or the environment is adverse, or that alternatives exist that would be less adverse, the council shall recommend those alternatives, or other measures that the state board or other state agencies may take, to reduce the adverse public health or environmental impacts. The council shall make all information relating to this review available to the public.

(f) Within 60 days after receiving a notice from the council of a determination of an adverse impact on public health or the environment, the state board shall revise the proposed regulation to avoid or reduce the adverse impacts, or the state agencies subject to this section shall take those appropriate actions that will, to the extent feasible, mitigate the adverse impacts, so that, on balance, there are no adverse impacts on public health or the environment.

(g) In conducting a multimedia evaluation pursuant to subdivision (a), the state board shall consult with other boards and departments within the California Environmental Protection Agency, the State Department of Health Services, the State Energy Resources Conservation and Development Commission, the Department of Forestry and Fire Protection, the Department of Food and Agriculture, and other state agencies with responsibility for, or expertise regarding, impacts that could result from the production, use, or disposal of the motor vehicle fuel that may be used to meet the specification.

(h) Notwithstanding subdivisions (a) to (g), inclusive, the state board may, on or before July 1, 2000, adopt a regulation that was formally proposed prior to January 1, 2000, to revise existing specifications for motor vehicle fuels, if the California Environmental Policy Council has reviewed the environmental assessment of the proposed revision and concurs that there will be no significant adverse impact on public health or the environment, including the impacts on air, water, or soil, that is likely to result from the changes in motor vehicle fuels that are expected to be used to meet the state board's revised motor vehicle fuel specifications. The state board shall deem the determination by the council to be final and conclusive.

(i) The state board shall enter into an agreement, consistent with Section 57004, to conduct an external scientific peer review of the state board's predictive model and, notwithstanding Section 7550.5 of the Government Code, shall submit the findings of that review to the Legislature, on or before July 1, 2000.

SEC. 30. Section 21178 is added to the Public Resources Code, to read:

21178. (a) This section applies only to an application received on or before January 1, 2001, by the permit issuing agency, for a permit to construct a project consisting of facilities, processing units, or equipment necessary to produce Phase 3 reformulated gasoline.

(b) A lead agency shall determine whether an environmental impact report should be prepared within 30 days of its determination that the application for the project is complete.

(c) If a lead agency determines that an environmental impact report should be prepared, the lead agency shall send a notice of preparation, as provided in Section 21080.4, within 10 days of that determination.

(d) If the environmental impact report will be prepared under contract with the lead agency pursuant to Section 21082.1, the lead agency shall issue a request for proposals for preparation of the report as soon as it has adequate information to prepare a request for proposals, and in any event, not later than 30 days after the time for response to the notice of preparation has expired. The contract shall be awarded within 30 days of the response date for the request for proposals.

(e) The period of time for public review and comment on a draft environmental impact report shall be 45 days from the date that a copy of the draft environmental impact report is sent with the public notice by first-class mail, or any other method that is at least as prompt, to any requester. The lead agency may extend the comment period for not more than 15 days if it determines that the public interest will be served. This subdivision shall not be construed to limit the authority of the lead agency to hold a public hearing to receive comments on the draft report after expiration of the 45-day period, or any extended review period. Any comment concerning the adequacy of a negative declaration or environmental impact report that is not received by the lead agency within the 45-day comment period, within any extended review period, or at a public hearing held after the expiration of the 45-day period, shall not be considered part of the record before the lead agency in considering a project approval.

(f) Where a public agency has approved a negative declaration or certified an environmental impact report and approved a project, but has failed to file within five working days after the approval becomes final, the notice required by subdivision (a) of Section 21152, the permit applicant may file a notice of approval, as specified in Section 21152 with the county clerk. The notice shall identify the approving agency and shall contain all of the information required by Section 21152. For purposes of Section 21167, a permit applicant's filing of a notice pursuant to this subdivision shall have the same effect as the public agency's filing of the notice required by Section 21152.

(g) No environmental impact report shall include a discussion of a "no project" alternative, nor shall it include a discussion of any

alternative sites for the project that are outside of existing refinery boundaries.

(h) Any action or proceeding brought pursuant to subdivision (c) of Section 21167 shall be commenced within 20 days after the filing of the notice required by subdivision (a) of Section 21152 by the lead agency if the final environmental impact report is sent, by first-class mail at least 15 days before the notice is filed.

(i) For the purposes of this section, "Phase 3 reformulated gasoline" means gasoline meeting the specifications adopted by the State Air Resources Board on or before January 1, 2000, pursuant to Executive Order D-5-99.

(j) The deadlines established in subdivisions (b), (c), and (d) may be extended by a public agency, to the extent that delay is caused by a failure of the applicant to provide necessary information on a timely basis or by the applicant's delay in paying any fees required by the lead agency for preparation of the environmental impact report.

(k) This section shall be repealed on January 1, 2003, unless a later enacted statute, which is enacted on or before January 1, 2003, deletes or extends the date on which it is repealed.

SEC. 31. Section 25310.5 is added to the Public Resources Code, to read:

25310.5. If the commission determines the studies on methyl tertiary-butyl ether (MTBE) undertaken by the commission pursuant to Executive Order D-5-99 and pursuant to the Supplemental Report of the Budget Act of 1997 do not adequately assess the ongoing supply and availability of gasoline for the state's consumers associated with the phaseout of MTBE, notwithstanding Section 7550.5 of the Government Code, the commission shall submit a report to the Legislature and the Governor on or before July 1, 2000, concerning the impact of that phaseout on the supply and availability of gasoline.

SEC. 32. Section 13752 of the Water Code is amended to read:

13752. Reports made in accordance with paragraph (1) of subdivision (b) of Section 13751 shall not be made available for inspection by the public, but shall be made available to governmental agencies for use in making studies, or to any person who obtains a written authorization from the owner of the well. However, a report associated with a well located within two miles of an area affected or potentially affected by a known unauthorized release of a contaminant shall be made available to any person performing an environmental cleanup study associated with the unauthorized release, if the study is conducted under the order of a regulatory agency. A report released to a person conducting an environmental cleanup study shall not be used for any purpose other than for the purpose of conducting the study.

SEC. 33. Nothing in this act shall abrogate, limit, or restrict any right to relief under any theory of liability that any person or any state or local agency may have under any statute or common law for any

injury or damage, whether to person or property, including any legal, equitable, or administrative remedy under federal or state law, against any party, with respect to methyl tertiary-butyl ether (MTBE).

SEC. 34. The State Water Resources Control Board shall convene a working group of interested parties, including, but not limited to, local agency, regional board, industry, environmental, and water agency representatives to review and evaluate options for the prompt closure of petroleum underground storage tanks that have not been upgraded to meet the December 22, 1998, upgrade deadline and that have not been closed in conformance with Section 25298 of the Health and Safety Code. On or before January 1, 2001, the working group shall recommend to the Secretary for Environmental Protection appropriate actions to reduce the threat to groundwater resources posed by those tanks.

SEC. 35. (a) It is the intent of the Legislature that California Phase 3 Reformulated Gasoline (CaRFG3) regulations adopted pursuant to Executive Order D-5-99, and proposed by the State Air Resources Board prior to January 1, 2000, be subject to a comprehensive multimedia evaluation consistent with the objectives of this act, to the extent practicable within the timeframe provided in the executive order.

(b) It is further the intent of the Legislature that the evaluation of any significant adverse impact in the conduct of a multimedia evaluation pursuant to Section 43830.8 of the Health and Safety Code be performed by the agency with lead responsibility and expertise over the public health or environmental impact, that the evaluation be subject to peer review, and that the evaluation be submitted to the California Environmental Policy Council for final review and approval.

SEC. 36. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code or because costs 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 813

An act to repeal and add Section 43830.8 of the Health and Safety Code, relating to motor vehicle fuel.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. (a) It is the intent of the Legislature that the California Phase 3 Reformulated Gasoline (CaRFG3) regulations described in the Governor's Executive Order No. D-5-99, and proposed by the State Air Resources Board, be subject to a comprehensive multimedia evaluation consistent with the objectives of this act, to the extent practicable, and within the timeframe provided for in the Executive order.

(b) It is further the intent of the Legislature that each portion of the multimedia evaluation referred to in Section 43830.8 of the Health and Safety Code be performed by the agency with lead responsibility and expertise over that medium, be subject to peer review, and be submitted to the California Environmental Policy Council for final review and approval.

SEC. 2. Section 43830.8 of the Health and Safety Code is repealed.

SEC. 3. Section 43830.8 is added to the Health and Safety Code, to read:

43830.8. (a) The state board may not adopt any regulation that establishes a specification for motor vehicle fuel unless that regulation, and a multimedia evaluation conducted by affected agencies and coordinated by the state board, are reviewed by the California Environmental Policy Council established pursuant to subdivision (b) of Section 71017 of the Public Resources Code.

(b) As used in this section, "multimedia evaluation" means the identification and evaluation of any significant adverse impact on public health or the environment, including air, water, or soil, that may result from the production, use, or disposal of the motor vehicle fuel that may be used to meet the state board's motor vehicle fuel specifications.

(c) The multimedia evaluation shall be based on the best available scientific data, written comments submitted by any interested person, and information collected by the state board in preparation for rulemaking. At a minimum, the evaluation shall address impacts associated with all the following:

(1) Emissions of air pollutants, including ozone forming compounds, particulate matter, toxic air contaminants, and greenhouse gases.

(2) Contamination of surface water, groundwater, and soil.

(3) Disposal or use of the byproducts and waste materials from the production of the fuel.

(d) The state board shall prepare a written summary of the multimedia evaluation and submit it for peer review in accordance with Section 57004. The state board shall maintain for public inspection, a record of any relevant materials submitted from any state agency and any written public comments received during the multimedia evaluation. The state board shall submit its written summary and the results of the peer review to the California Environmental Policy Council prior to the adoption of the proposed regulation.

(e) The council shall complete its review of the multimedia evaluation within 90 calendar days following notice from the state board that it intends to adopt the regulation. If the council determines that the proposed regulation will cause a significant adverse impact on the public health or the environment, or that alternatives exist that would be less adverse, the council shall recommend alternative measures that the state board or other state agencies may take to reduce the adverse impact on public health or the environment. The council shall make all information relating to its review available to the public.

(f) Within 60 days of receiving notification from the council of a determination of adverse impact, the state board shall adopt revisions to the proposed regulation to avoid or reduce the adverse impact, or the affected agencies shall take appropriate action that will, to the extent feasible, mitigate the adverse impact so that, on balance, there is no adverse impact on public health or the environment.

(g) In coordinating a multimedia evaluation pursuant to subdivision (a), the state board shall consult with other boards and departments within the California Environmental Protection Agency, the State Department of Health Services, the State Energy Resources Conservation and Development Commission, the Department of Forestry and Fire Protection, the Department of Food and Agriculture, and other state agencies with responsibility for, or expertise regarding, impacts that could result from the production, use, or disposal of the motor vehicle fuel that may be used to meet the specification.

(h) Notwithstanding subdivisions (a) through (g), inclusive, the state board may, prior to July 1, 2000, adopt a regulation that was formally proposed prior to January 1, 2000, to revise existing specifications for motor vehicle fuel, if the council reviews the environmental assessment of the proposed revision and determines that there will be no significant adverse impact on public health or the environment, including any impact on air, water, or soil, that is likely to result from the change in motor vehicle fuel that is expected to be implemented to meet the state board's revised motor vehicle fuel specifications. Such a determination by the council shall be deemed final and conclusive.

(i) Notwithstanding subdivision (a), the state board may adopt a regulation that establishes a specification for motor vehicle fuel without the proposed regulation being subject to a multimedia evaluation if the council, following an initial evaluation of the proposed regulation, conclusively determines that the regulation will not have any significant adverse impact on public health or the environment.

SEC. 4. The state board shall enter into an agreement, consistent with Section 57004, to conduct an external scientific peer review of the California Predictive Model and, notwithstanding Section 7550.5 of the Government Code, shall submit the findings of that review to the Legislature on or before July 1, 2000.

CHAPTER 814

An act to add Section 43024 to the Health and Safety Code, relating to motor vehicle fuel.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 43024 is added to the Health and Safety Code, to read:

43024. Notwithstanding Section 7550.5 of the Government Code, commencing April 1, 2000, the State Energy Resources Conservation and Development Commission shall submit quarterly reports to the Legislature summarizing the amount of methyl tertiary-butyl ether (MTBE) used in gasoline in this state by each refinery during the preceding quarter and comparing that amount to the amount of MTBE used in gasoline by each refinery during the previous quarter.

CHAPTER 815

An act to amend Section 12701 of the Business and Professions Code, to amend Sections 14513.4, 14515.5, 14536, 14549, 14549.6, 14550, 14551, 14560.5, 14561, 14571, 14571.8, 14573, 14573.5, 14574, 14580, 14581, and 14591.1 of, to amend, repeal, and add Sections 14504 and 14549.5 of, to add Sections 14514.4.1, 14514.7, 14519.5, 14525.5.1, 14585, and 40511 to, to add Chapter 7.5 (commencing with Section 14588) to Division 12.1 of, to add and repeal Sections 14549.1 and 14549.7 of, to repeal Section 14542 of, to repeal and add Sections 14551.5, 14560, and 14575 of, the Public Resources Code, relating to beverage containers, and making an appropriation therefor.

[Approved by Governor October 8, 1999. Filed with
Secretary of State October 10, 1999.]

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

SECTION 1. Section 12701 of the Business and Professions Code is amended to read:

12701. The following persons are not weighmasters:

(a) Retailers weighing, measuring, or counting commodities for sale by them in retail stores in the presence of, and directly to, consumers.

(b) Except for persons subject to Section 12730, producers of agricultural commodities or livestock, who weigh commodities produced or purchased by them or by their producer neighbors, when no charge is made for the weighing, or when no signed or initialed statement or memorandum is issued of the weight upon which a purchase or sale of the commodity is based.

(c) Common carriers issuing bills of lading on which are recorded, for the purpose of computing transportation charges, the weights of commodities offered for transportation, including carriers of household goods when transporting shipments weighing less than 1,000 pounds.

(d) Milk samplers and weighers licensed pursuant to Article 8 (commencing with Section 35161) of Chapter 12 of Part 1 of Division 15 of the Food and Agricultural Code, when performing the duties for which they are licensed.

(e) Persons who measure the amount of oil, gas, or other fuels for purposes of royalty computation and payment, or other operations of fuel and oil companies and their retail outlets.

(f) Newspaper publishers weighing or counting newspapers for sale to dealers or distributors.

(g) Textile maintenance establishments weighing, counting, or measuring any articles in connection with the business of those establishments.

(h) County sanitation districts operating pursuant to Chapter 3 (commencing with Section 4700) of Part 3 of Division 5 of the Health and Safety Code, garbage and refuse disposal districts operating pursuant to Chapter 2 (commencing with Section 49100) of Part 8 of Division 30 of the Public Resources Code, and solid waste facilities, as defined in Section 40194 of the Public Resources Code.

(i) Persons who purchase scrap metal or salvage materials pursuant to a nonprofit recycling program, or recycling centers certified pursuant to Division 12.1 (commencing with Section 14500) of the Public Resources Code that purchase empty beverage containers from the public for recycling.

(j) Pest control operators licensed pursuant to Chapter 4 (commencing with Section 11701) of Division 6 of the Food and Agricultural Code.

(k) Retailers, or recycling centers established solely for the redemption of empty beverage containers, as that phrase is defined in Section 14512 of the Public Resources Code, who are weighing, measuring, or counting salvage or returnable materials for purchase or redemption by them in retail stores, or, in the case of recycling centers, on the retail store premises or on a parking lot immediately adjacent to a retail store which is used for the purpose of parking by the store customers, directly from and in the presence of the seller. "Retailer" means an entity which derives 90 percent or more of its income from the sale of small quantities of food or nonfood items, or both, directly to consumers. "Salvage materials" means used paper products and used containers made of aluminum, tin, glass, or plastic.

(*l*) Any log scaler who performs log scaling functions, except weighing, as defined in the United States Forest Service Handbook, Supplement No. 4 of March 1987.

SEC. 2. Section 14504 of the Public Resources Code is amended to read:

14504. (a) "Beverage" means beer and other malt beverages, wine and distilled spirit coolers, carbonated mineral and soda waters, and similar carbonated soft drinks in liquid form which are intended for human consumption.

(b) "Beverage" does not include wine, or wine from which alcohol has been removed in whole or in part, whether or not sparkling or carbonated.

(c) "Soft drink" does not include 100 percent fruit juice to which carbonation is added.

(d) This section shall become inoperative on January 1, 2000, and as of January 1, 2001, is repealed, unless a later enacted statute that is enacted before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 14504 is added to the Public Resources Code, to read:

14504. (a) Except as provided in subdivision (b), "beverage" means any of the following products if those products are in liquid, ready-to-drink form, and are intended for human consumption:

(1) Beer and other malt beverages.

(2) Wine and distilled spirit coolers.

(3) Carbonated water, including soda and carbonated mineral water.

(4) Noncarbonated water, including noncarbonated mineral water.

(5) Carbonated soft drinks.

(6) Noncarbonated soft drinks and "sport" drinks.

(7) Except as provided in paragraph (4) of subdivision (b), noncarbonated fruit drinks that contain any percentage of fruit juice.

(8) Coffee and tea drinks.

(9) Carbonated fruit drinks.

(b) "Beverage" does not include any of the following:

(1) Any product sold in a container that is not an aluminum beverage container, a glass container, a plastic beverage container, or a bimetal container.

(2) Wine, or wine from which alcohol has been removed, in whole or in part, whether or not sparkling or carbonated.

(3) Milk, medical food, or infant formula.

(4) One hundred percent fruit juice in containers that are 46 ounces or more in volume.

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

SEC. 4. Section 14513.4 of the Public Resources Code is amended to read:

14513.4. "Handling fee" means an amount paid to an operator of a supermarket site, a rural region recycler, as defined in Section 14525.5.1, or a nonprofit convenience zone recycler, as defined in Section 14514.7, that is located in a convenience zone, for every beverage container redeemed by the operator at the supermarket or within the zone in which the supermarket site is located, by the rural region recycler, or by the nonprofit convenience zone recycler.

SEC. 5. Section 14514.4.1 is added to the Public Resources Code, to read:

14514.4.1. "Neighborhood dropoff program" means a recycling program which meets all of the following criteria:

(a) The program is certified by the department as a dropoff or collection program, as defined by Section 14511.7.

(b) The program has been designated by a city, county, or city and county to provide a recycling opportunity in residential neighborhoods specified by the city, county, or city and county.

(c) The program is located in a rural region, as identified pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 14571.

SEC. 6. Section 14514.7 is added to the Public Resources Code, to read:

14514.7. "Nonprofit convenience zone recycler" means a recycling center that meets all of the following criteria:

(a) The recycling center is operated by an organization established under Section 501(c) or 501(d) of Title 26 of the United States Code.

(b) The recycling center is certified by the department pursuant to Section 14538.

(c) The recycling center is located within a convenience zone, but is not necessarily a supermarket site.

SEC. 7. Section 14515.5 of the Public Resources Code is amended to read:

14515.5. "PET container" means a plastic beverage container labeled with a "1" pursuant to Section 18015 and subject to this division.

SEC. 8. Section 14519.5 is added to the Public Resources Code, to read:

14519.5. "Recycler" means a recycling center, dropoff or collection program, or curbside program.

SEC. 9. Section 14525.5.1 is added to the Public Resources Code, to read:

14525.5.1. "Rural region recycler" means an operator that is certified pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 14571, and who accepts or collects empty beverage containers from consumers pursuant to Section 14572 with the intention to recycle them.

SEC. 10. Section 14536 of the Public Resources Code is amended to read:

14536. (a) Except as provided in subdivision (b), the director shall adopt, amend, or repeal all rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) (1) The director shall adopt regulations, and may adopt emergency regulations for the purposes of implementing Sections 14538, 14539, 14541, 14549.1, 14550, 14561, 14574, 14575, and 14591.

(2) Any emergency regulations, if adopted, shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the director.

SEC. 11. Section 14542 of the Public Resources Code is repealed.

SEC. 12. Section 14549 of the Public Resources Code is amended to read:

14549. (a) Every glass container manufacturer shall report to the department each month, by a method as determined by the department, the amount of total tons of new glass food, drink, and beverage containers made in California by that glass container manufacturer and the tons of California postfilled glass used in the manufacturing of those new containers.

(b) Each glass container manufacturer in the state shall use a minimum percentage of 35 percent of postfilled glass in the manufacturing of their glass food, drink, or beverage containers measured in the aggregate, on an annual basis, except that if a glass container manufacturer demonstrates to the satisfaction of the department that its use of postfilled glass during the annual period is made up of at least 75 percent mixed color cullet, then that manufacturer shall use a minimum percentage of 25 percent

postfilled glass in the manufacturing of its glass, food, drink, or beverage containers, measured in the aggregate, on an annual basis.

(c) A glass container manufacturer may seek a reduction or waiver of the minimum postfilled glass percentage required to be used in the manufacture of glass food, drink, or beverage containers pursuant to subdivision (b). The department may grant a reduction or waiver of the percentage requirement if it finds and determines that it is technologically infeasible for the glass container manufacturer to achieve the percentage requirement or if the department determines that a glass container manufacturer cannot achieve the minimum percentage because of a lack of available glass cullet.

(d) For the purposes of this section, "mixed color cullet" means cullet that does not meet the American Society for Testing and Materials (ASTM) standard specifications for color mix of color sorted postfilled glass as raw material for the manufacture of glass containers.

SEC. 13. Section 14549.1 is added to the Public Resources Code, to read:

14549.1. (a) In order to improve the quality and marketability of glass containers collected for recycling by curbside recycling programs, the department may, consistent with Section 14581 and subject to the availability of funds, pay a quality glass incentive payment to curbside recycling programs. The total amount shall not exceed three million dollars ($3,000,000) per calendar year. The department shall make a quality glass incentive payment based on all of the following:

(1) The amount of the quality glass incentive payment shall be up to twenty-five dollars ($25) per ton, as determined by the department.

(2) The department shall make a quality glass incentive payment only for color-sorted glass beverage containers that are substantially free of contamination.

(3) The department shall make a quality glass incentive payment only for glass beverage containers that are either collected color sorted by curbside recycling programs, or collected commingled by curbside recycling programs and subsequently color sorted by the collector or the operator of a materials recovery facility.

(4) Only one payment shall be made for each color-sorted glass beverage container collected.

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

SEC. 14. Section 14549.5 of the Public Resources Code is amended to read:

14549.5. (a) Within 90 days after the effective date of this section, and annually thereafter, or more frequently as determined to be necessary by the department, the department shall review and, if

necessary in order to ensure payment of the most accurate commingled rate feasible, recalculate commingled rates paid for beverage containers and postfilled containers paid to curbside recycling programs, collection programs, and recycling centers. Prior to recalculating a commingled rate pursuant to this section, the department shall consult with private and public operators of curbside recycling programs, collection programs, and recycling centers concerning the size of the statewide sample, appropriate sampling methodologies, and alternatives to exclusive reliance on a statewide commingled rate.

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

SEC. 15. Section 14549.5 is added to the Public Resources Code, to read:

14549.5. Within 90 days after the effective date of this section, and annually thereafter, or more frequently as determined to be necessary by the department, the department shall review and, if necessary in order to ensure payment of the most accurate commingled rate feasible, recalculate commingled rates paid for beverage containers and postfilled containers paid to curbside recycling programs, collection programs, and recycling centers. Prior to recalculating a commingled rate pursuant to this section, the department shall do all of the following:

(a) Consult with private and public operators of curbside recycling programs, collection programs, and recycling centers concerning the size of the statewide sample, appropriate sampling methodologies, and alternatives to exclusive reliance on a statewide commingled rate.

(b) At least 60 days prior to the effective date of any new commingled rate, hold a public hearing, after giving notice, to make available to the public and affected parties the department's review and any proposed recalculations of the commingled rate.

(c) At least 60 days prior to the effective date of any new commingled rate, and upon the request of any party, make available documentation or studies which were prepared as part of the department's review of a commingled rate.

(d) This section shall become operative on January 1, 2001.

SEC. 16. Section 14549.6 of the Public Resources Code is amended to read:

14549.6. (a) The department, consistent with Section 14581 and subject to the availability of funds, shall annually pay a total of fifteen million dollars ($15,000,000) per fiscal year to operators of curbside programs and neighborhood dropoff programs. The payments shall be for each container collected by the curbside or neighborhood dropoff programs and properly reported to the department by processors, based upon all of the following:

(1) The payment amount shall be calculated based upon the volume of beverage containers collected by curbside and neighborhood dropoff programs and reported to the department by processors during the reporting period of October 1 to December 31, inclusive, of the fiscal year for which those payments are made.

(2) The per-container rate shall be calculated by dividing the total volume of beverage containers collected, as determined pursuant to paragraph (1), into the sum of fifteen million dollars ($15,000,000).

(3) The amount to be paid to each operator of a curbside and neighborhood dropoff program shall be based upon the per-container rate, calculated pursuant to paragraph (2), multiplied by the curbside program's total reported beverage container volume during the period specified in paragraph (1).

(b) The amounts paid pursuant to this section shall be expended by operators of curbside and neighborhood dropoff programs only for activities related to beverage container recycling.

(c) The department shall disburse payments pursuant to this section not sooner than the 11th month of the fiscal year for which the payments are being made, subject to the availability of funds.

SEC. 17. Section 14549.7 is added to the Public Resources Code, to read:

14549.7. (a) Consistent with Section 14581, the department shall pay up to six million eight hundred forty thousand dollars ($6,840,000) to the City of San Diego for a pilot program to expand that city's curbside recycling program. Payments shall be contingent upon the execution of a cooperative agreement between the department and the City of San Diego. The cooperative agreement shall require the City of San Diego to make curbside recycling services available, on or before January 1, 2003, to a minimum of 190,000 homes that are not provided, as of January 1, 2000, with curbside recycling, and shall include an implementation and payment schedule. The department shall make these payments once every three months, contingent on the City of San Diego making satisfactory progress toward implementation of the terms of the cooperative agreement, except the department shall make the first payment within 30 days of the signing of the cooperative agreement.

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

SEC. 18. Section 14550 of the Public Resources Code is amended to read:

14550. (a) (1) Every processor shall report to the department for each month the amount of empty beverage containers, by material type and weight of container or material, excluding refillable beverage containers, received from recycling centers and curbside programs for recycling, and the scrap value paid and revenue received for glass, PET, and bimetal containers and any beverage container that is assessed a processing fee. Every processor

shall also report to the department for each month the amount of other postfilled aluminum, glass, and plastic food and drink packaging materials sold filled to consumers in this state and returned for recycling. These reports shall be submitted within 10 days after each month, in the form and manner which the department may prescribe.

(2) The department shall treat all information reported pursuant to this section by a processor as commercial or financial information subject to the procedures established pursuant to Section 14554.

(b) Every distributor who sells or offers for sale in this state beverages in aluminum beverage containers, nonaluminum metal beverage containers, glass beverage containers, plastic beverage containers, or other beverage containers, including refillable beverage containers of these types, shall report to the department for each month the number of beverages sold in these beverage containers in this state which are labeled pursuant to Section 14561, by material type and size and weight of container or any other method as the department may prescribe. These reports shall be submitted by the day when payment is due, consistent with the applicable payment schedule specified in subdivision (a) of Section 14574, in the form and manner which the department may prescribe.

(c) Every distributor who sells or offers for sale in this state beverages in refillable beverage containers and who pays a refund value to distributors, dealers, or consumers who return these containers for refilling, shall report to the department for each month the number of these beverage containers returned empty to be refilled, by material type and size of container or any other method which the department may prescribe. These reports shall be submitted by the day when payment is due, consistent with the schedule specified in subdivision (a) of Section 14574, in the form and manner which the department may prescribe.

(d) Notwithstanding subdivision (b), a distributor who elects to make an annual payment pursuant to subdivision (b) of Section 14574 may, upon the approval of the department, submit the reports required by this section annually to the department. The reports shall accompany the annual payment submitted pursuant to Section 14574.

SEC. 19. Section 14551 of the Public Resources Code is amended to read:

14551. (a) The department shall establish reporting periods for the reporting of redemption rates and recycling rates. Each reporting period shall be six months. The department shall determine all of the following for each reporting period and shall issue a report on its determinations, within 130 days of the end of each reporting period:

(1) Sales of beverages in aluminum beverage containers, bimetal beverage containers, glass beverage containers, plastic beverage

containers, and other beverage containers in this state, including refillable beverage containers.

(2) Returns for recycling, and returns not for recycling, of empty aluminum beverage containers, bimetal beverage containers, glass beverage containers, plastic beverage containers, and other beverage containers in this state, including refillable beverage containers returned to distributors pursuant to Section 14572. These numbers shall be calculated using the average current weights of beverage containers, as determined and reported by the department. To these numbers shall be added and separately reported the following, if greater than, or equal to, zero:

(A) All empty postfilled aluminum, glass, and plastic food or drink packaging materials sold in the state, returned for recycling, and reported by weight to the department which do not have a refund value less the number specified in subparagraph (B).

(B) The number of beverage containers which comprise the first five percentage points of the redemption rate without including the empty postfilled aluminum, glass, and plastic food or drink packaging materials sold in the state, returned for recycling and reported by weight to the department which do not have a refund value.

(3) An aluminum beverage container redemption rate, the numerator of which shall be the number of empty aluminum beverage containers returned, including refillable aluminum beverage containers and empty postfilled aluminum food or drink packaging material included in paragraph (2), and the denominator of which shall be the number of aluminum beverage containers sold in this state.

(4) An aluminum beverage container recycling rate, the numerator of which shall be the number of empty aluminum beverage containers returned for recycling, including refillable aluminum beverage containers, and the denominator of which shall be the number of aluminum beverage containers sold in this state.

(5) A bimetal beverage container redemption rate, the numerator of which shall be the number of empty bimetal beverage containers returned, and the denominator of which shall be the number of bimetal beverage containers sold in this state.

(6) A bimetal beverage container recycling rate, the numerator of which shall be the number of empty bimetal containers returned for recycling, including refillable bimetal beverage containers, and the denominator of which shall be the number of bimetal beverage containers sold in this state.

(7) A glass beverage container redemption rate, the numerator of which shall be the number of empty glass beverage containers returned, including refillable glass beverage containers and empty postfilled food or drink packaging materials included in paragraph (2), and the denominator of which shall be the number of glass beverage containers sold in this state.

(8) A glass beverage container recycling rate, the numerator of which shall be the number of empty glass beverage containers returned for recycling, including refillable glass beverage containers, and the denominator of which shall be the number of glass beverage containers sold in this state.

(9) A plastic beverage container redemption rate, the numerator of which shall be the number of empty plastic beverage containers returned, including refillable plastic beverage containers and empty postfilled food or drink packaging materials included in paragraph (2), and the denominator of which shall be the number of plastic beverage containers sold in this state.

(10) A plastic beverage container recycling rate, the numerator of which shall be the number of empty plastic beverage containers returned for recycling, including refillable plastic beverage containers, and the denominator of which shall be the number of plastic beverage containers sold in this state.

(11) A redemption rate for other beverage containers, the numerator of which shall be the number of empty beverage containers other than those containers specified in paragraphs (1) to (10), inclusive, returned, and the denominator of which shall be the number of beverage containers, other than those containers specified in paragraphs (1) to (10), inclusive, sold in this state.

(12) A recycling rate for other beverage containers, the numerator of which shall be the number of empty beverage containers other than those containers specified in paragraphs (1) to (10), inclusive, returned for recycling, and the denominator of which shall be the number of beverage containers, other than those containers specified in paragraphs (1) to (10), inclusive, sold in this state.

(13) The department may define categories of other beverage containers, and report a redemption rate and a recycling rate for each such category of other beverage containers.

(14) The volumes of materials collected from certified recycling centers, by city or county, as requested by the city or county, if the reporting is consistent with the procedures established pursuant to Section 14554 to protect proprietary information.

(b) The department shall determine the manner of collecting the information for the reports specified in subdivision (a), including establishing procedures, to protect any proprietary information concerning the sales and purchases.

SEC. 20. Section 14551.5 of the Public Resources Code is repealed.

SEC. 21. Section 14551.5 is added to the Public Resources Code, to read:

14551.5. (a) The department shall register the operators of curbside programs pursuant to this section.

(b) Each curbside program that receives refund values and administrative fees from certified processors, or that receives refund values from certified recycling centers, shall register with the

department for an identification number. No curbside program may receive refund values or administrative fees without a valid identification number.

(c) The director shall adopt, by regulation, a procedure for the registration of curbside programs. This procedure shall include standards and requirements for registration. These regulations shall require that all information be submitted to the department under penalty of perjury. A curbside program shall meet all of the standards and requirements contained in the regulations for registration.

(d) The department shall require that the identification numbers received pursuant to this section be used on shipping reports for material collected by curbside programs pursuant to Sections 14538 and 14539 and on all other reports or documentation required by the department to administer this division.

SEC. 22. Section 14560 of the Public Resources Code is repealed.

SEC. 23. Section 14560 is added to the Public Resources Code, to read:

14560. (a) (1) Every beverage distributor shall pay the department, for deposit into the fund, a redemption payment of two and one-half cents ($0.025) for every beverage container sold or offered for sale in this state by the distributor.

(2) A beverage container with a capacity of 24 fluid ounces or more shall be considered as two beverage containers for purposes of redemption payments and refund values.

(b) Except as provided in subdivision (c), every beverage container sold or offered for sale in this state has a minimum refund value of five cents ($0.05) for every two beverage containers redeemed and three cents ($0.03) for every single or unpaired beverage container redeemed in a single transaction.

(c) Notwithstanding subdivision (b), a single or unpaired beverage container of 24 fluid ounces or larger shall have a minimum refund value of five cents ($0.05).

(d) (1) The department shall periodically review the fund to ensure that there are adequate funds in the fund to pay refund values and other disbursements required by this division.

(2) If the department determines, pursuant to a review made pursuant to paragraph (1), that there may be inadequate funds to pay the refund values and necessary disbursements required by this division, the department shall immediately notify the Legislature of the need for urgent legislative action.

(3) On or before 180 days after the notice is sent pursuant to paragraph (2), the department may reduce or eliminate expenditures, or both, from the fund as necessary, according to the procedure set forth in Section 14581, to ensure that there are adequate funds in the fund to pay the refund values and other disbursements required by this division.

(e) This section does not apply to any refillable beverage container.

(f) The repeal and reenactment of this section by this act enacted during the 1999-2000 Regular Session shall not affect any obligations or penalties imposed by this section, as it read on January 1, 1999.

SEC. 24. Section 14560.5 of the Public Resources Code is amended to read:

14560.5. (a) (1) The invoice or other form of accounting of the transaction submitted by a beverage distributor of soft drinks or mineral water to a dealer shall separately identify the amount of any redemption payment imposed on beverage containers pursuant to Section 14560 and the separate identification of the invoice or other form of accounting of the transaction shall not combine or include the gross wholesale price with the redemption payment but shall separately state the gross amount of the redemption payment for each type of container included in each delivery.

(2) The invoice or other form of accounting of the transaction submitted by any distributor of beer and malt beverages or wine or distilled spirit coolers to a dealer may separately identify the portion of the gross wholesale price attributable to any redemption payment imposed on beverage containers pursuant to Section 14560 and the separate identification of the invoice or other form of accounting of the transaction may separately state the gross amount of the redemption payment for each type of container included in each delivery. The invoice or other form of accounting of this transaction may separately identify the portion of the gross wholesale price attributable to the redemption payment.

(3) Notwithstanding Section 14541, the department shall randomly inspect beverage distributor invoices or other forms of accounting to ensure compliance with this subdivision. However, an unintentional error in addition or subtraction on an invoice or other form of accounting by a route driver of a distributor shall not be deemed a violation of this subdivision.

(4) For the purposes of this subdivision, the term "type of container" includes the amount of the redemption payment on containers under 20 ounces and on containers 20 ounces or more.

(b) To the extent technically and economically feasible, a dealer may separately identify the amount of any redemption payment on the customer cash register receipt provided to the consumer, by the dealer, which is applied to the purchase of a beverage container.

(c) (1) A dealer shall separately identify the amount of any redemption payment imposed on a beverage container in all advertising of beverage products and on the shelf labels of the dealer's establishment. The separate identification shall be accomplished by stating one of the following:

(A) The price of the beverage product plus a descriptive term, as described in paragraph (2).

(B) The price of the beverage product plus the amount of the applicable redemption payment and a descriptive term, as described in paragraph (2).

(C) The price of the beverage product plus the amount of the applicable redemption payment, a descriptive term, as described in paragraph (2), and the total of these two amounts.

(2) For purposes of paragraph (1), the redemption payment shall be identified by one of the following descriptive terms: "California Redemption Value," "CA Redemption Value," "CRV," "California Cash Refund," "CA Cash Refund," or any other message specified in Section 14561.

(3) A dealer shall not include the redemption payment in the total price of a beverage container in any advertising or on the shelf of the dealer's establishment.

(4) This subdivision applies only to a dealer at a dealer location with a sales and storage area totaling more than 4,000 square feet.

(5) The penalties specified in Sections 14591 and 14591.1 shall not be applied to a person who violates this subdivision.

(d) With regard to the sale of beer and other malt beverages or wine and distilled spirits cooler beverages, any amount of redemption payment imposed by this division is subject to Section 25509 of the Business and Professions Code.

SEC. 25. Section 14561 of the Public Resources Code is amended to read:

14561. (a) (1) A beverage manufacturer shall clearly indicate on every beverage container sold or offered for sale by that beverage manufacturer in this state the message "CA Redemption Value" or "California Redemption Value," by either printing or embossing the beverage container or by securely affixing a clear and prominent stamp, label, or other device to the beverage container.

(2) A beverage manufacturer may affix the message "CA Cash Refund" or "California Cash Refund" on a beverage container sold or offered for sale by the beverage manufacturer, instead of the message specified in paragraph (1), but the message shall be affixed in the manner prescribed in paragraph (1).

(b) Any refillable beverage container sold or offered for sale is exempt from this section. However, any beverage manufacturer or container manufacturer may place upon, or affix to, a refillable beverage container, any message that the manufacturer determines to be appropriate relating to the refund value of the beverage container.

(c) No person shall offer to sell, or sell to a consumer a beverage container subject to subdivision (a) that has not been labeled pursuant to this section, except for a refillable beverage container that is exempt from labeling pursuant to subdivision (b).

(d) The department may require that any beverage container intended for sale in this state be printed, embossed, stamped, labeled, or otherwise marked with a universal product code or similar machine-readable indicia.

(e) Any beverage container labeled with the message specified in subdivision (a) shall have the minimum redemption payment

established pursuant to Section 14560, which shall be paid by the distributor to the department pursuant to Section 14574.

(f) To the extent not otherwise authorized by this section, a glass beverage container containing noncarbonated fruit drinks that contain any percentage of fruit juice, made subject to this division pursuant to this act amending this section during the 1999 portion of the 1999–2000 Regular Session, may comply with the requirements of this section by embossing the container with the message described in paragraph (1) or (2) of subdivision (a).

(g) Notwithstanding any other requirement of this section, any beverage container that is included within the scope of this division on January 1, 2000, but that was not subject to this division before that date shall be exempt from the labeling requirements of this section until January 1, 2001.

SEC. 26. Section 14571 of the Public Resources Code is amended to read:

14571. (a) Except as otherwise provided in this chapter, there shall be at least one certified recycling center or location within every convenience zone which accepts and pays the refund value, if any, at one location for all types of empty beverage containers and is open for business during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9 a.m. to 5 p.m.

(b) (1) Notwithstanding subdivision (a), the department may require a certified recycling center to operate 15 of its 30 hours of operation other than during 9 a.m. to 5 p.m.

(2) Notwithstanding subdivision (a) and paragraph (1), the department may certify a recycling center that will operate less than 30 hours per week, if all of the following conditions are met:

(A) The recycling center is in a rural region. For purposes of this subparagraph, "rural region" means a nonurban area identified by the department on an annual basis using Farmers Home Loan Administration criteria. Those criteria include, but are not limited to, places, open country, cities, towns, or census designated places with populations that are less than 10,000 persons. The department may designate an area with a population of between 10,000 and 50,000 persons as a rural region, unless the area is identified as part of, or associated with, an urban area, as determined by the department on an individual basis.

(B) The recycling center agrees to post a sign indicating the location of the nearest recycling center which is open at least 30 hours per week and which will accept all material types.

(C) The needs of the community and the goals of this division will be best served by certification of the operation as a recycling center.

(c) Before establishing operating hours for a certified recycling center pursuant to subdivision (b), the department shall make a determination that this action is necessary to further the goals of this division and that the proposed operating hours will not significantly

decrease the ability of consumers to conveniently return beverage containers for the refund value to a certified recycling center redeeming all material types.

(d) For purposes of this section, if the recycling center is staffed and is not a reverse vending machine, a center is "open for business" if all of the following requirements are met:

(1) An employee of the certified recycling center or location is present during the hours of operation and available to the public to accept containers and to pay the refund values.

(2) In addition to the sign specified in subdivision (h), a sign having a minimum size of two feet by two feet is posted at the certified recycling center or location indicating that the center or location is open. Where allowed by local zoning requirements or where zoning restrictions apply, the sign shall be of the maximum allowable size.

(3) The prices paid, by weight or per container, are posted at the location.

(e) Except as provided in subdivision (f), for the purpose of this section, if the recycling center consists of reverse vending machines or other unmanned automated equipment, the center is "open for business" if the equipment is properly functioning, accepting all types of empty beverage containers at the recycling location, and paying posted refund values no less than the minimums required by this division.

(f) If a recycling center consists of reverse vending machines or other automated equipment, the recycling center is "open for business" if the equipment is properly functioning, and accepting all types of empty beverage containers at one physical recycling location within the recycling location.

(g) Whenever a recycling center which is a reverse vending machine is not "open for business" during the 30 hours of operation required and posted pursuant to this section and Section 14570, the dealer which is hosting the reverse vending machine at its place of business shall redeem all empty beverage container types at all open cash registers or one designated location in the store, as specified on the sign required pursuant to subdivision (h).

(h) In addition to the sign specified in paragraph (2) of subdivision (d), each reverse vending machine shall be posted with a clear and conspicuous sign on or near the reverse vending machine which states that beverage containers may be redeemed by the host dealer if the machine is nonoperational at any time during the required 30 hours of operation, pursuant to subdivision (g). The department shall determine the size and location of the sign and the message required to be printed on the sign.

SEC. 27. Section 14571.8 of the Public Resources Code is amended to read:

14571.8. (a) No lease entered into by a dealer after January 1, 1987, may contain a leasehold restriction that prohibits or results in the prohibition of the establishment of a recycling location.

(b) The director may grant an exemption from the requirements of Section 14571 for an individual convenience zone only after the department solicits public testimony on whether or not to provide an exemption from Section 14571. The solicitation process shall be designed by the department to ensure that operators of recycling centers, dealers, and members of the public in the jurisdiction affected by the proposed exemption are aware of the proposed exemption. After evaluation of the testimony and any field review conducted, the department shall base a decision to exempt a convenience zone on one, or any combination, of the following factors:

(1) The exemption will not significantly decrease the ability of consumers to conveniently return beverage containers for the refund value to a certified recycling center redeeming all material types.

(2) Except as provided in paragraph (5), the nearest certified recycling center is within a reasonable distance of the convenience zone being considered from exemption.

(3) The convenience zone is in the area of a curbside recycling program that meets the criteria specified in Section 14509.5.

(4) The requirements of Section 14571 cannot be met in a particular convenience zone due to local zoning or the dealer's leasehold restrictions for leases in effect on January 1, 1987, and the local zoning or leasehold restrictions are not within the authority of the department and the dealer. However, any lease executed after January 1, 1987, shall meet the requirements specified in subdivision (a).

(5) The convenience zone has redeemed less than 60,000 containers per month for the prior 12 months and, notwithstanding paragraph (2), a certified recycling center is located within one mile of the convenience zone that is the subject of the exemption.

(c) The department shall review each convenience zone in which a certified recycling center was not located on January 1, 1996, to determine the eligibility of the convenience zone under the exemption criteria specified in subdivision (b).

(d) The total number of exemptions granted by the director under this section shall not exceed 35 percent of the total number of convenience zones identified pursuant to this section.

(e) The department shall include in its annual report prepared pursuant to Section 14542 a report on curbside recycling programs and on the potential need for exemption authority additional to that provided by subdivision (d).

(f) The department may, on its own motion, or upon petition by any interested person, revoke a convenience zone exemption if either of the following occurs:

(1) The condition or conditions which caused the convenience zone to be exempt no longer exists, and the department determines that the criteria for an exemption specified in this section, or Section 2715 of Title 14 of the California Code of Regulations, are not presently applicable to the convenience zone.

(2) The department determines that the convenience zone exemption was granted due to an administrative error.

(g) If an exemption is revoked and a recycling center is not certified and operational in the convenience zone, the department shall, within 10 days of the date of the decision to revoke, serve all dealers in the convenience zone with the notice specified in subdivision (a) of Section 14571.7.

(h) An exemption shall not be revoked when a recycling center becomes certified and operational within an exempt convenience zone unless either of the events specified in paragraphs (1) and (2) of subdivision (f) occur.

SEC. 28. Section 14573 of the Public Resources Code is amended to read:

14573. (a) The department shall pay to a processor, for every empty beverage container received by the processor from a certified recycling center, curbside program, or dropoff or collection program, upon presentation of a completed processor invoice accompanied by a shipping report from the supplier of the material, in the form adopted by the department, the sum of all of the following amounts:

(1) The refund value.

(2) Two and one-half percent of the refund value for administrative costs.

(3) The processing payment established pursuant to Section 14575.

(b) The department shall make the payment required in subdivision (a) within two working days of the date that the department is notified of the delivery or within the time determined by the department to be necessary and adequate. If the payment is not made by the Controller to the certified processor within 20 working days of receipt of the claims schedule, the Controller shall pay the processor interest at the current prime lending rate for any period in excess of these 20 working days.

SEC. 29. Section 14573.5 of the Public Resources Code is amended to read:

14573.5. (a) Except as provided in Section 14573.6, a processor shall pay to a certified recycling center, dropoff or collection program, or curbside program, for all types of empty beverage containers, by type of beverage container, received by the processor from a recycling center, curbside program, or dropoff or collection program, upon receipt by the certified processor of a shipping report from the supplier of the material, in the form adopted by the

regulations adopted by the department, the sum of all of the following amounts:

(1) The refund value.

(2) Three-fourths of 1 percent of the refund value for administrative costs.

(3) The processing payment established pursuant to Section 14575.

(b) The processor shall make the payment required in subdivision (a) within two working days of the date that the processor receives these empty beverage containers, or within the time which the department determines to be necessary and adequate. Under the procedures authorized by the department, the department may authorize a certified recycling center to cancel containers, and a certified processor may authorize a certified recycling center to cancel containers on behalf of the certified processor.

(c) If the department has set up an accounts receivable procedure or other procedure for seeking the payment of money improperly obtained by a certified recycling center from the fund, the department may reimburse the processor for its payments to that certified recycling center.

SEC. 30. Section 14574 of the Public Resources Code, is amended to read:

14574. (a) A distributor of beverage containers shall pay to the department the redemption payment for every beverage container, other than a refillable beverage container, sold or transferred to a dealer, less 1 percent for the distributor's administrative costs.

(1) Except as provided in paragraph (2), the payment shall be made within 40 days of any sale, or in the form and manner which the department may prescribe.

(2) The payment made by a distributor of beer and other malt beverages shall be made not later than the last day of the third month following the sale.

(b) (1) Notwithstanding subdivision (a), a distributor may, upon the approval of the department, elect to make a single annual payment of redemption payments, if the distributor's projected redemption payment for a calendar year totals less than ten thousand dollars ($10,000).

(2) An annual redemption payment made pursuant to this subdivision is due and payable on or before February 1 for every beverage container sold or transferred by the distributor to a dealer in the previous calendar year.

(3) A distributor shall notify the department of its intent to make an annual redemption payment pursuant to this subdivision on or before January 31 of the calendar year preceding the year in which the payment will be due.

SEC. 31. Section 14575 of the Public Resources Code, as added by Section 3 of Chapter 1 of the Statutes of 1999, is repealed.

SEC. 32. Section 14575 is added to the Public Resources Code, to read:

14575. (a) If any type of empty beverage container with a refund value established pursuant to Section 14560 has a scrap value less than the cost of recycling, the department shall on or before January 3, 2000, and annually thereafter, establish a processing fee and a processing payment for the container, by the type of the material of the container.

(b) The processing payment shall be at least equal to the difference between the scrap value offered to a statistically significant sample of recyclers by willing purchasers, and except for the initial calculation made pursuant to subdivision (d), the sum of both of the following:

(1) The actual cost for certified recycling centers, excluding centers receiving a handling fee, of receiving, handling, storing, transporting, and maintaining equipment for each container sold for recycling or, only if the container is not recyclable, the actual cost of disposal, calculated pursuant to subdivision (c). The department shall determine the statewide weighted average cost to recycle each beverage container type, which shall serve as the actual recycling costs for purposes of paragraphs (3) and (4) of subdivision (c), by conducting a survey of the costs of a statistically significant sample of certified recycling centers, excluding those recycling centers receiving a handling fee, for receiving, handling, storing, transporting, and maintaining equipment.

(2) A reasonable financial return for recycling centers.

(c) The department shall base the processing payment pursuant to this section upon all of the following:

(1) Except as specified in paragraph (2), the department shall use the average scrap values paid to recyclers between October 1, 1998, and September 30, 1999, for the initial calculation and the same 12-month period directly preceding the year in which the processing fee is calculated for any subsequent calculation.

(2) For material types not included in the program on January 1, 1999, the department shall estimate the scrap value for the initial calculation based on a sample of average scrap values paid to recyclers between July 1, 1999, and September 30, 1999.

(3) Except as specified in subdivision (d), the department shall use the actual recycling costs for certified recycling centers, as determined pursuant to paragraph (1) of subdivision (b) by the department on or before January 1, 2000, for the initial calculation.

(4) The department shall make all subsequent determinations of the actual costs for certified recycling centers, pursuant to paragraph (1) of subdivision (b), on or before January 1, 2001, and every third year thereafter.

(d) For the January 1, 2000, processing payment calculation only, the department shall use the following cost data for certified recycling centers for the January 1, 1999, calculation:

(1) Eighty-five dollars and nineteen cents ($85.19) for each ton of glass containers.

(2) Four hundred seventeen dollars and ninety-six cents ($417.96) for each ton of bimetal containers.

(3) Six hundred forty-two dollars and sixty-nine cents ($642.69) for each ton of PET plastic containers.

(4) Six hundred forty-two dollars and sixty-nine cents ($642.69) for each ton of non-PET plastic containers.

(e) Except as specified in subdivision (f), the actual processing fee paid by beverage manufacturers shall equal 65 percent of the processing payment calculated pursuant to subdivision (b).

(f) The department, consistent with Section 14581 and subject to the availability of funds, shall reduce the processing fee paid by beverage manufacturers pursuant to subdivision (e) by expending funds in each material processing fee account, established pursuant to subparagraph (A) of paragraph (6) of subdivision (a) of Section 14581, so that the amount of the processing fee equals 25 percent of the processing payment calculated pursuant to subdivision (b).

(g) (1) Except as provided in paragraphs (2) and (3), every beverage manufacturer shall pay to the department the applicable processing fee for each container sold or transferred to a distributor or dealer within 40 days of the sale in the form and in the manner which the department may prescribe.

(2) (A) Notwithstanding Section 14506, with respect to the payment of processing fees for beer and other malt beverages manufactured outside the state, the beverage manufacturer shall be deemed to be the person or entity named on the certificate of compliance issued pursuant to Section 23671 of the Business and Professions Code. If the department is unable to collect the processing fee from the person or entity named on the certificate of compliance, the department shall give written notice by certified mail to that person or entity. The notice shall state that the processing fee shall be remitted in full within 30 days of issuance of the notice or the person or entity shall not be permitted to offer that beverage brand for sale within the state. If the person or entity fails to remit the processing fee within 30 days of issuance of the notice, the department shall notify the Department of Alcoholic Beverage Control that the certificate holder has failed to comply, and the Department of Alcoholic Beverage Control shall prohibit the offering or sale of that beverage brand within the state.

(B) The department shall enter into a contract with the Department of Alcoholic Beverage Control, pursuant to Section 14536.5, concerning the implementation of this paragraph, which shall include a provision reimbursing the Department of Alcoholic Beverage Control for its costs incurred in implementing this paragraph.

(3) (A) Notwithstanding paragraph (1), a beverage manufacturer may, upon the approval of the department, elect to

make a single annual payment of processing fees, if the beverage manufacturer's projected processing fees for a calendar year total less than one thousand dollars ($1,000).

(B) An annual processing fee payment made pursuant to this paragraph is due and payable on or before February 1 for every beverage container sold or transferred by the beverage manufacturer to a distributor or dealer in the previous calendar year.

(C) A beverage manufacturer shall notify the department of its intent to make an annual processing fee payment pursuant to this paragraph on or before January 31 of the calendar year preceding the year in which the payment will be due.

(4) The department shall pay the processing payments on redeemed containers to processors, in the same manner as it pays refund values pursuant to Sections 14573 and 14573.5. The processor shall pay the recycling center the entire processing payment representing the actual cost and financial return incurred by the recycling center, as specified in subdivision (a).

(h) When assessing processing fees pursuant to subdivision (a), the department shall assess the processing fee on each container sold, as provided in subdivision (e), by the type of material of the container.

(i) The container manufacturer, or a designated agent, shall pay to, or credit, the account of the beverage manufacturer in an amount equal to the processing fee.

(j) The department shall annually, on or before January 1, determine the statewide average scrap values paid to recyclers by processors for beverage containers during the 12-month period ending September 30. If the department determines that the statewide average scrap values paid for glass containers is 10 percent or more above or below the previous year's scrap value, the department shall adjust the processing payment to equal the difference between the cost of recycling and the new statewide average scrap value.

SEC. 33. Section 14580 of the Public Resources Code is amended to read:

14580. (a) Except as provided in subdivision (d), the department shall deposit all amounts paid as redemption payments by distributors pursuant to Section 14574 and all other revenues received into the California Beverage Container Recycling Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the fund is hereby continuously appropriated to the department for expenditure without regard to fiscal year for the following purposes:

(1) The payment of refund values and administrative fees to processors pursuant to Section 14573.

(2) For a reserve for contingencies, which shall not be greater than an amount equal to 5 percent of the total amount paid to

processors pursuant to Section 14573 during the preceding calendar year, plus any interest earned on that amount.

(b) Except as provided in Section 14580.5, the money in the fund may be expended by the department for the administration of this division only upon appropriation by the Legislature in the annual Budget Act.

(c) After setting aside funds estimated to be needed for expenditures authorized pursuant to this section, the department shall set aside funds on a quarterly basis for the purposes specified in Section 14581. Notwithstanding Section 13340 of the Government Code, that money is hereby continuously appropriated to the department, without regard to fiscal year, for the purposes specified in Section 14581.

(d) The department shall deposit all civil penalties or fines collected pursuant to this division into the Penalty Account, which is hereby created in the fund. The money in the Penalty Account may be expended by the department only upon appropriation by the Legislature, for purposes of this division.

SEC. 34. Section 14581 of the Public Resources Code, as amended by Section 4 of Chapter 1 of the Statutes of 1999, is amended to read:

14581. (a) Subject to the availability of funds, and pursuant to subdivision (c), the department shall expend the money set aside in the fund, pursuant to subdivision (c) of Section 14580 for the purposes of this section:

(1) Twenty-three million five hundred thousand dollars ($23,500,000) shall be expended annually for the payment of handling fees required pursuant to Section 14585.

(2) Fifteen million dollars ($15,000,000) shall be expended annually, until January 1, _____, for payments for curbside programs and neighborhood dropoff programs pursuant to Section 14549.6.

(3) (A) Fifteen million dollars ($15,000,000) plus the proportional share of the cost-of-living adjustment, as provided in subdivision (b), shall be expended annually in the form of grants for beverage container litter reduction programs and recycling programs issued to either of the following:

(i) Certified community conservation corps, that were in existence on September 30, 1999, or that are formed subsequent to that date that are designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the most recent census, of more than 250,000 persons.

(ii) Community conservation corps, that are designated by a county to perform litter abatement, recycling, and related activities, and are certified by the California Conservation Corps as having operated for a minimum of two years and as meeting all other criteria of Section 14507.5.

(B) Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(4) (A) Ten million five hundred thousand dollars ($10,500,000) may be expended annually for payments of five thousand dollars ($5,000) to cities and ten thousand dollars ($10,000) for payments to counties for beverage container recycling and litter cleanup activities, or the department may calculate the payments to counties and cities on a per capita basis, and may pay whichever amount is greater, for those activities.

(B) Eligible activities for the use of these funds may include, but are not necessarily limited to, support for new or existing curbside recycling programs, neighborhood dropoff recycling programs, public education promoting beverage container recycling, litter prevention, and cleanup, cooperative regional efforts among two or more cities or counties, or both, or other beverage container recycling programs.

(C) These funds may not be used for activities unrelated to beverage container recycling or litter reduction.

(D) To receive these funds, a city, county, or city and county shall fill out and return a funding request form to the Department of Conservation. The form shall specify the beverage container recycling or litter reduction activities for which the funds will be used.

(E) The Department of Conservation shall annually prepare and distribute a funding request form to each city, county, or city and county. The form shall specify the amount of beverage container recycling and litter cleanup funds for which the jurisdiction is eligible. The form shall not exceed one double-sided page in length, and may be submitted electronically. If a city, county, or city and county does not return the funding request form within 90 days of receipt of the form from the department, the city, county, or city and county is not eligible to receive the funds for that funding cycle.

(F) For the purposes of this paragraph, per capita population shall be based on the population of the incorporated area of a city or city and county and the unincorporated area of a county. The department may withhold payment to any city, county, or city and county that has prohibited the siting of a supermarket site, caused a supermarket site to close its business, or adopted a land use policy that restricts or prohibits the siting of a supermarket site within its jurisdiction.

(5) (A) Five hundred thousand dollars ($500,000) may be expended annually in the form of grants for beverage container recycling and litter reduction programs.

(B) Up to a total of six million eight hundred forty thousand dollars ($6,840,000) shall be paid to the City of San Diego, between January 1, 2000, and January 1, 2004, for a curbside recycling program conducted pursuant to Section 14549.7.

(6) (A) The department shall expend the amount necessary to pay the processing payment established pursuant to subdivision (b) of Section 14575. The department shall establish separate processing fee accounts in the fund for each beverage container material type for which a processing payment and processing fee is calculated pursuant to Section 14575, into which account shall be deposited both of the following:

(i) All amounts paid as processing fees for each beverage container material type pursuant to subdivision (g) of Section 14575.

(ii) Funds equal to pay 75 percent of the processing payments established in subdivision (b) of Section 14575, in order to reduce the processing fee to the level provided in subdivision (f) of Section 14575.

(B) Notwithstanding Section 13340 of the Government Code, the money in each processing fee account is hereby continuously appropriated to the department for expenditure without regard to fiscal year, for purposes of making processing payments, and reducing processing fees, pursuant to Section 14575.

(7) (A) Up to 10 million dollars ($10,000,000) shall be expended by the department between January 1, 2000, and January 1, 2002, for the purposes of undertaking a statewide public education and information campaign aimed at promoting increased recycling of beverage containers.

(B) Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2002, the department shall provide a report to the Legislature on the impact of the statewide public education and information campaign and make recommendations for any future campaigns.

(8) Up to three million dollars ($3,000,000) shall be expended annually, until January 1, _____, for the payment of quality glass incentive payments pursuant to Section 14549.1.

(9) (A) Three hundred thousand dollars ($300,000) shall be expended annually by the department, until January 1, 2003, pursuant to a cooperative agreement entered into between the department and Keep California Beautiful, a nonprofit 501(c)(3) organization chartered by the State of California in 1990, for the purpose of conducting statewide public education campaigns aimed at preventing and cleaning up beverage containers and related litter. The campaigns shall include, but not be limited to, coordination of Keep California Beautiful month.

(B) Prior to making an expenditure pursuant to this paragraph, the department shall enter into a cooperative agreement with Keep California Beautiful.

(C) As part of the cooperative agreement, Keep California Beautiful shall provide the department with an annual campaign plan and budget, and a report of previous year campaign activities.

(D) On or before July 1, 2002, the department shall make a recommendation to the Legislature on future funding for beverage

container litter prevention and cleanup activities by Keep California Beautiful.

(b) The fifteen million dollars ($15,000,000) that is set aside pursuant to paragraph (3) of subdivision (a), is a base amount that the department shall adjust annually to reflect any increases or decreases in the cost of living, as measured by the Department of Labor, or a successor agency, of the federal government.

(c) (1) The department shall review all funds on a quarterly basis to ensure that there are adequate funds to make the payments specified in this section and the processing fee reductions required pursuant to Section 14575.

(2) If the department determines, pursuant to a review made pursuant to paragraph (1), that there may be inadequate funds to pay the payments required by this section and the processing fee reductions required pursuant to Section 14575, the department shall immediately notify the appropriate policy and fiscal committees of the Legislature regarding the inadequacy.

(3) On or before 180 days after the notice is sent pursuant to paragraph (2), the department may reduce or eliminate expenditures, or both, from the funds as necessary, according to the procedure set forth in subdivision (d).

(d) If the department determines that there are insufficient funds to make the payments specified pursuant to this section and Section 14575, the department shall reduce all payments proportionally.

(e) Prior to making an expenditure pursuant to paragraph (7) of subdivision (a), the department shall convene an advisory committee consisting of representatives of the beverage industry, beverage container manufacturers, environmental organizations, the recycling industry, nonprofit organizations, and retailers, to advise the department on the most cost-effective and efficient method of the expenditure of the funds for that education and information campaign.

SEC. 35. Section 14585 is added to the Public Resources Code, to read:

14585. (a) The department shall adopt guidelines and methods for paying handling fees to supermarket sites, nonprofit convenience zone recyclers, or rural region recyclers to provide an incentive for the redemption of empty beverage containers in convenience zones. The guidelines shall include, but not be limited to, all of the following:

(1) Handling fees shall be paid on a monthly basis, in the form and manner adopted by the department. The department shall require that claims for the handling fee be filed with the department not later than the first day of the second month following the month for which the handling fee is claimed as a condition of receiving any handling fee.

(2) To be eligible for any handling fee, a supermarket site recycling center, nonprofit convenience zone recycler, or rural region recycler shall redeem not less than 60,000 beverage

containers, and, except for operators of certified recycling centers that are nonprofit organizations, not more than 500,000 beverage containers, during the calendar month in which the handling fee is claimed.

(3) A beverage container with a capacity of 24 fluid ounces or more shall be considered as two beverage containers for purposes of determining the eligibility percentage, any handling fee calculations, and payments.

(4) The department shall determine the number of eligible containers per site for which a handling fee will be paid in the following manner:

(A) Each eligible site's combined monthly volume of glass and plastic beverage containers shall be divided by the site's total monthly volume of all empty beverage container types.

(B) If the quotient determined pursuant to subparagraph (A) is equal to, or more than, 10 percent, the total monthly volume of the site shall be the maximum volume which is eligible for a handling fee for that month.

(C) If the quotient determined pursuant to subparagraph (A) is less than 10 percent, the department shall divide the volume of glass and plastic beverage containers by 10 percent. That quotient shall be the maximum volume that is eligible for a handling fee for that month.

(5) The department shall pay a handling fee of 1.8 cents ($0.018) per eligible beverage container, as determined pursuant to paragraph (4).

(6) Notwithstanding paragraph (5), the total handling fee payment to a supermarket site, nonprofit convenience zone recycler, or rural region recycler shall not exceed two thousand three hundred dollars ($2,300) per month.

(7) If the eligible volume in any given month would result in handling fee payments which exceed the allocation of funds for that month, as provided in subdivision (b), sites with higher eligible monthly volumes shall receive handling fees for their entire eligible monthly volume before sites with lower eligible monthly volumes receive any handling fees.

(8) (A) If a dealer where a supermarket site, nonprofit convenience zone recycler, or rural region recycler is located ceases operation for remodeling or for a change of ownership, the operator of that supermarket site nonprofit convenience zone recycler, or rural region recycler shall be eligible to apply for handling fees for that site for a period of three months following the date of the closure of the dealer.

(B) Every supermarket site operator, nonprofit convenience zone recycler, or rural region recycler shall promptly notify the department of the closure of the dealer where the supermarket site, nonprofit convenience zone recycler, or rural region recycler is located.

(C) Notwithstanding subparagraph (A), any operator who fails to provide notification to the department pursuant to subparagraph (B) shall not be eligible to apply for handling fees.

(b) The department may allocate the twenty-three million five hundred thousand dollars ($23,500,000) authorized for expenditure for the payment of handling fees pursuant to paragraph (1) of subdivision (a) of Section 14581 on a monthly basis and may carry over any unexpended monthly allocation to a subsequent month or months. However, unexpended monthly allocations shall not be carried over to a subsequent fiscal year for the purpose of paying handling fees but may be carried over for any other purpose pursuant to Section 14581.

(c) (1) The department shall not make handling fee payments to more than one certified recycling center in a convenience zone. If a dealer is located in more than one convenience zone, the department shall offer a single handling fee payment to a supermarket site located at that dealer. This handling fee payment shall not be split between the affected zones. The department shall stop making handling fee payments if another recycling center certifies to operate within the convenience zone without receiving payments pursuant to this section, if the department monitors the performance of the other recycling center for 60 days and determines that the recycling center is in compliance with this division. Any recycling center that locates in a convenience zone, thereby causing a preexisting recycling center to become ineligible to receive handling fee payments, is ineligible to receive any handling fee payments in that convenience zone.

(2) The department shall offer a single handling fee payment to a rural region recycler that is located anywhere inside a convenience zone that is not served by another certified recycling center and does either of the following:

(A) Operates a minimum of 30 hours per week in one convenience zone.

(B) Serves two or more convenience zones, and meets all of the following criteria:

(i) Is the only certified recycler within each convenience zone.

(ii) Is open and operating at least eight hours per week in each convenience zone and is certified at each location.

(iii) Operates at least 30 hours per week in total for all convenience zones served.

(d) The department may require the operator of a supermarket site or rural region recycler receiving handling fees to maintain records for each location where beverage containers are redeemed, and may require the supermarket site or rural region recycler to take any other action necessary for the department to determine that the supermarket site or rural region recycler does not receive an excessive handling fee.

(e) The department may determine and utilize a standard container per pound rate, for each material type, for the purpose of calculating volumes and making handling fee payments.

SEC. 36. Chapter 7.5 (commencing with Section 14588) is added to Division 12.1 of the Public Resources Code, to read:

CHAPTER 7.5. PENALTIES FOR UNFAIR RECYCLING COMPETITION

14588. It is the intent of the Legislature that handling fees paid to supermarket site recycling centers pursuant to Section 14585 shall only be used to offset the unique costs of providing convenient recycling opportunities to consumers at supermarket sites, and that those fees may not be expended for the purpose of engaging in unfair and predatory competition in order to reduce recycling rates of other recycling centers certified pursuant to this division.

14588.1. As used in this chapter, "unfair and predatory pricing" means the offering of a payment to a consumer by a supermarket site, that receives handling fees for the redemption of a beverage container, in an amount that exceeds the sum of both of the following:

(a) The refund value for that container.

(b) The average scrap value paid for the container by a certified recycling center located within a 10-mile radius of the supermarket site on the date of the alleged occurrence, or, if the allegation is based upon an advertisement in a newspaper, periodical, or other publication, the date on which the advertisement was purchased.

14588.2. To ensure that handling fees paid to a supermarket site are not used for the purpose of engaging in unfair and predatory pricing, and to otherwise further the intent of this chapter, the department shall, upon the complaint of a person other than the department, do all of the following:

(a) Within 30 days of receiving the complaint, the department shall complete an audit of the payments for the redemption of beverage containers being offered or paid by the supermarket site, and by all other certified recycling centers within a 10-mile radius of the supermarket site, for the purpose of determining whether the supermarket site is engaged in unfair and predatory pricing.

(b) If the director determines there is probable cause that a supermarket site, against which a complaint has been made, has engaged in unfair and predatory pricing, the director shall, within 30 days of receiving the complaint, convene an informal hearing before the director, or the director's designee. At the hearing, the director, or the director's designee, shall review the audit conducted pursuant to subdivision (a) and any evidence presented by the complainant that a supermarket site has engaged in unfair and predatory pricing. The director, or the director's designee, shall also review any evidence presented by the respondent that the respondent has not engaged in unfair and predatory pricing. The respondent shall have

the burden of proof in demonstrating that it has not engaged in unfair and predatory pricing.

(c) Within 10 days of the completion of the hearing, the director, or the director's designee, shall determine whether the supermarket site has engaged in unfair and predatory pricing. This determination shall be based upon the audit conducted pursuant to subdivision (a), and upon any clear and convincing evidence of unfair and predatory pricing presented at the hearing.

(d) During the time period from the date of the receipt of a complaint pursuant to subdivision (a), until the date the director makes a determination pursuant to subdivision (c), the supermarket site against which the allegation of unfair and predatory pricing is made shall not receive handling fees. However, nothing in this subdivision shall affect the payment of handling fees to a supermarket site that is found not to have engaged in unfair and predatory pricing pursuant to this section, or to the activities of a supermarket site prior to the date of the alleged unfair and predatory pricing.

(e) If, after complying with the procedure established pursuant to this section, the director, or the director's designee, determines that a supermarket site has engaged in unfair and predatory pricing, the site is ineligible to receive handling fees after the date of that determination.

(f) The complainant or respondent may obtain a review of the determination made pursuant to this section by filing in the superior court a petition for a writ of mandate within 30 days following the issuance of the determination. Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set forth in this subdivision, the determination made pursuant to this subdivision is not subject to review by any court or agency.

(g) If either party appeals the determination of the director, or the director's designee, pursuant to subdivision (f), and the department prevails, the department may recover any costs associated with its defense of the complaint.

SEC. 37. Section 14591.1 of the Public Resources Code is amended to read:

14591.1. (a) The department may assess penalties pursuant to this division only after notice and hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. Each violation of this division is a separate violation and each day of the violation is a separate violation. The department shall deposit all revenues from civil penalties in the Penalty Account specified in subdivision (g) of Section 14580.

(b) Any person who intentionally or negligently violates this division may be assessed a civil penalty by the department of up to five thousand dollars ($5,000) for each separate violation, or for continuing violations, for each day that violation occurs.

(c) Any person who violates this division by an action not subject to subdivision (b) may be assessed a civil penalty by the department of up to one thousand dollars ($1,000) for each separate violation, or for continuing violations, for each day that violation occurs.

(d) No person may be liable for a civil penalty imposed under subdivision (b) and for a civil penalty imposed under subdivision (c) for the same act or failure to act.

SEC. 38. Section 40511 is added to the Public Resources Code, to read:

40511. (a) Notwithstanding Section 7550.5 of the Government Code, on or before December 1, 2000, the board, in consultation with the Department of Conservation, shall prepare and submit to the Legislature a report that identifies any duplication or overlap between the following programs authorized under this division and Division 12.1 (commencing with Section 14500) administered and funded by the two agencies:

(1) Public information and education programs.

(2) Local government review and assistance programs.

(3) Recycled materials market development programs.

(b) The report shall include, but not be limited to, suggested legislation, budget actions, or administrative actions that could be taken to eliminate duplication or overlap between the two agencies and programs.

SEC. 39. On or before January 1, 2001, the Department of Conservation shall conduct an audit of the handling fees paid to supermarket sites subject to Section 14585 of the Public Resources Code. The audit shall include all of the following:

(a) A review of the costs of supermarket site recycling operations, excluding those typical operational costs allowable under the processing fees established pursuant to Section 14575 of the Public Resources Code.

(b) An identification of any costs that are unique to supermarket sites and that would warrant the payment of handling fees for these sites.

(c) An evaluation of whether or not the legislative objective to establish convenient supermarket site recycling centers has been achieved and, if so, the need to continue such a subsidy program.

(d) An assessment and evaluation of the reasonableness of administrative and overhead costs identified as unique to these supermarket site recycling centers.

SEC. 40. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 816

An act to amend Sections 12162, 12205, 12305.5, and 12310 of the Public Contract Code, and to amend Section 42701 of the Public Resources Code, relating to recycling.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 12162 of the Public Contract Code is amended to read:

12162. (a) At least 50 percent of the total dollar amount of paper products purchased or procured shall be a recycled paper product, as defined in Section 12161. In addition, at least 25 percent of the total fine writing and printing paper purchased or procured shall be a recycled paper product, as defined in Section 12161.

(b) All state agencies shall report to the department and to the board on their progress in meeting the requirements of subdivision (a) and Section 12205. The department shall develop a uniform reporting procedure which state agencies shall follow. If at any time a requirement has not been met, the department, in consultation with the board, shall review procurement policies and shall make recommendations for immediate revisions to ensure that the requirement is met. The department, in consultation with the board, shall present its recommendations on these procurement policies to the Legislature in the department's annual report pursuant to Section 12225.

(c) (1) All state agencies shall give a price preference, not to exceed 10 percent, to recycled paper products, if the product's fitness, quality, and availability are comparable to nonrecycled products. The board, in consultation with the department, shall establish, on or before May 1, 1994, and every two years thereafter, price preferences for the purposes of meeting the goals set forth in this section and Section 12205 for recycled products. For those priority commodities, as defined by the board, the price preference established by the board shall not be less than 5 percent. The board shall publish the established price preferences annually in the board's report to the Legislature pursuant to Section 40507 of the Public Resources Code.

(2) In establishing the price preferences, the board shall take into consideration all of the following factors:

(A) Materials that comprise the largest percentage of the state's solid waste stream.

(B) Materials that have the highest percentage of postconsumer material.

(C) Materials that require expanded markets.

(D) Any other market factors as determined by the board.

(3) The combined dollar amount of preference granted pursuant to this section and any other provision of law shall not exceed one hundred thousand dollars ($100,000).

(d) Notwithstanding paragraph (1) of subdivision (c), the recycled paper bidder preference shall not exceed fifty thousand dollars ($50,000) if a preference exceeding that amount would preclude an award to a small business that offers nonrecycled paper products and is qualified in accordance with Section 14838 of the Government Code.

SEC. 2. Section 12205 of the Public Contract Code is amended to read:

12205. (a) All state agencies shall require all contractors to certify in writing the minimum percentage, if not the exact percentage, of postconsumer and secondary material in the materials, goods, or services provided or used. This certification shall be furnished under penalty of perjury.

(b) The department, in consultation with the board, shall review and revise the procurement specifications used by state agencies in order to eliminate restrictive specifications and discrimination against the procurement or purchase of recycled products. Fitness and quality being equal, all state agencies shall purchase recycled products instead of nonrecycled products whenever recycled products are available at the same total cost as nonrecycled products. All state agencies shall allow a price preference as determined by the board pursuant to Section 12162. In determining procurement specifications, with the exception of any specifications that have been established to preserve the public health and safety, all state procurement and purchasing specifications shall be established in a manner that results in the maximum state procurement and purchase of recycled products.

(c) (1) To assist the state in meeting the requirements of subdivision (a) of Section 12162 and subdivision (e) of this section, the department, in consultation with the board, may also establish recycled-content disclosure, recycled product-only bids, cooperative purchasing arrangements, or conduct an analysis of solid waste diversion from disposal facilities, to meet the requirements for recycled products and to encourage the maximum state procurement and purchase of recycled products. All state agencies shall, if feasible, implement recycled product-only bids for recycled products as defined in subdivision (a) of Section 12200, in order to

meet the requirements for recycled products set forth in this section and Section 12162.

(2) This subdivision applies to the procurement or purchase of the following materials, goods, and supplies, or products containing the following recycled resources:

(A) Paper products, which include, but are not limited to, fine papers, such as xerographic and envelope papers and form bond, corrugated boxes, newsprint, tissue, and toweling.

(B) Compost and cocompost products.

(C) Glass.

(D) Oil.

(E) Plastic.

(F) Solvents and paint, including water-based paint.

(G) Tires.

(H) Steel.

(d) All state agencies shall, if feasible, establish purchasing practices that ensure the purchase of materials, goods, and supplies that may be recycled or reused when discarded.

(e) The department shall set the following requirements for purchases made by state agencies:

(1) By January 1, 1996, at least 20 percent of state purchases are of recycled products.

(2) By January 1, 1998, at least 30 percent of state purchases are of recycled products.

(3) On and after January 1, 2000, at least 50 percent of state purchases are of recycled products.

(4) The requirements specified in this subdivision shall be applied to the purchases of state agencies for products listed in this section, except in subparagraph (A) of paragraph (2) of subdivision (c) for which requirements are specified in Section 12162.

(f) The purchases of the state agencies shall meet each requirement for, and be applied to the total dollar amount of, each specified product category as defined in this section. The purchase of a recycled-content product from one category may not be applied toward the requirements for, or the total dollar amount of, any other category listed in this section or Section 12157, 12162, 12301, or 12305.

SEC. 3. Section 12305.5 of the Public Contract Code is amended to read:

12305.5. If a recycled product costs more than the same product made with virgin material, the Legislature shall purchase fewer of those more costly products or apply cost savings, if any, gained from buying other recycled products towards the purchase of those more costly products.

SEC. 4. Section 12310 of the Public Contract Code is amended to read:

12310. (a) On and after January 1, 1997, at least 50 percent of the total dollar amount of paper products purchased or procured by the Legislature shall be purchased as a recycled paper product, as

defined in Section 12301. In addition, at least 25 percent of the total fine writing and printing paper purchased by the Legislature shall be recycled paper products, as defined in Section 12301.

If at any time the requirement for recycled products has not been met, the Legislature and the department, in consultation with the board, shall review the procurement policies of the Legislature and shall make recommendations for immediate revisions to ensure that each requirement is met. Revisions include, but are not limited to, raising the purchasing preference and altering the requirements for each or all recycled products. The department, in consultation with the board, shall present its conclusions and recommendations on these revisions of procurement policies to the Legislature in the department's biennial report pursuant to Section 12225.

(b) When contracting with the Legislature for the sale of recycled paper products, the contractor shall certify in writing to the contracting officer or his or her representative, that the recycled paper products offered contain the minimum percentage of waste materials required by subdivision (c) of Section 12301. The contractor shall specify the minimum, if not the exact, percentage of recycled product in the paper product, including both the secondary and postconsumer material content. This certification shall be furnished under penalty of perjury.

(c) The Legislature may, in consultation with the board, print a symbol on paper products selected by the Legislature. The symbol shall be similar to the following:

Printed on recycled paper. This symbol shall be printed only on paper products meeting the definition of recycled paper products in Section 12301.

(d) This section shall not prevent the Legislature from using existing stocks of paper products.

SEC. 5. Section 42701 of the Public Resources Code is amended to read:

42701. (a) In purchasing any materials to be used in paving or paving subbase for use by the Department of Transportation and any other state agencies that provide road construction and repair services, the State Procurement Officer shall make contracts available for those items that utilize recycled materials in paving materials and base, subbase, and pervious backfill materials, unless the Director of Transportation determines that the use of the materials is not cost-effective. In determining the cost-effectiveness of the materials subject to this section, the factors that the director shall consider include the following:

(1) The lifespan and durability of the pavement containing the materials.

(2) The maintenance cost of the pavement containing the materials.

(b) This section also applies to any person who contracts with the Department of General Services or with any other state agency to provide these construction and repair services.

(c) The recycled materials shall include, but are not limited to, recycled asphalt, crushed concrete subbase, foundry slag, and paving materials utilizing crumb rubber from automobile tires, ash, and glass and glassy aggregates. The specifications shall be based on the standards of the Department of Transportation for recycled paving materials and for recycled base, subbase, and pervious backfill materials.

CHAPTER 817

An act to amend Sections 14550, 14560.5, 14561, and 14581 of, and to repeal and add Sections 14549.1 and 14575 of, the Public Resources Code, relating to beverage containers, and making an appropriation therefor.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 14549.1 of the Public Resources Code, as proposed to be added by Senate Bill 332, is repealed.

SEC. 2. Section 14549.1 is added to the Public Resources Code, to read:

14549.1. In order to improve the quality and marketability of glass containers collected for recycling by curbside recycling programs, the department may, consistent with Section 14581 and subject to the availability of funds, pay a quality glass incentive payment to curbside recycling programs. The total amount shall not exceed three million dollars ($3,000,000) per calendar year. The department shall make a quality glass incentive payment based on all of the following:

(a) The amount of the quality glass incentive payment shall be up to twenty-five dollars ($25) per ton, as determined by the department.

(b) The department shall make a quality glass incentive payment only for color-sorted glass beverage containers that are substantially free of contamination.

(c) The department shall make a quality glass incentive payment only for glass beverage containers that are either collected color sorted by curbside recycling programs, or collected commingled by curbside recycling programs and subsequently color sorted by the collector or the operator of a materials recovery facility.

(d) Only one payment shall be made for each color-sorted glass beverage container collected.

SEC. 3. Section 14550 of the Public Resources Code is amended to read:

14550. (a) (1) Every processor shall report to the department for each month the amount of empty beverage containers, by material type and weight of container or material, excluding refillable beverage containers, received from recycling centers and curbside programs for recycling, and the scrap value paid for glass, PET, and bimetal containers and any beverage container that is assessed a processing fee. Every processor shall also report to the department for each month the amount of other postfilled aluminum, glass, and plastic food and drink packaging materials sold filled to consumers in this state and returned for recycling. These reports shall be submitted within 10 days after each month, in the form and manner that the department may prescribe.

(2) The department shall treat all information reported pursuant to this section by a processor as commercial or financial information subject to the procedures established pursuant to Section 14554.

(b) Every distributor who sells or offers for sale in this state beverages in aluminum beverage containers, nonaluminum metal beverage containers, glass beverage containers, plastic beverage containers, or other beverage containers, including refillable beverage containers of these types, shall report to the department for each month the number of beverages sold in these beverage containers in this state which are labeled pursuant to Section 14561, by material type and size and weight of container or any other method as the department may prescribe. These reports shall be submitted by the day when payment is due, consistent with the applicable payment schedule specified in subdivision (a) of Section 14574, in the form and manner which the department may prescribe.

(c) Every distributor who sells or offers for sale in this state beverages in refillable beverage containers and who pays a refund value to distributors, dealers, or consumers who return these containers for refilling, shall report to the department for each month the number of these beverage containers returned empty to be refilled, by material type and size of container or any other method which the department may prescribe. These reports shall be submitted by the day when payment is due, consistent with the schedule specified in subdivision (a) of Section 14574, in the form and manner which the department may prescribe.

(d) Notwithstanding subdivision (b), a distributor who elects to make an annual payment pursuant to subdivision (b) of Section 14574 may, upon the approval of the department, submit the reports required by this section annually to the department. The reports shall accompany the annual payment submitted pursuant to Section 14574.

SEC. 4. Section 14560.5 of the Public Resources Code is amended to read:

14560.5. (a) (1) The invoice or other form of accounting of the transaction submitted by a beverage distributor of soft drinks or mineral water to a dealer shall separately identify the amount of any redemption payment imposed on beverage containers pursuant to Section 14560 and the separate identification of the invoice or other form of accounting of the transaction shall not combine or include the gross wholesale price with the redemption payment but shall separately state the gross amount of the redemption payment for each type of container included in each delivery.

(2) The invoice or other form of accounting of the transaction submitted by any distributor of beer and malt beverages or wine or distilled spirit coolers to a dealer may separately identify the portion of the gross wholesale price attributable to any redemption payment imposed on beverage containers pursuant to Section 14560 and the separate identification of the invoice or other form of accounting of the transaction may separately state the gross amount of the redemption payment for each type of container included in each delivery. The invoice or other form of accounting of this transaction may separately identify the portion of the gross wholesale price attributable to the redemption payment.

(3) Notwithstanding Section 14541, the department shall randomly inspect beverage distributor invoices or other forms of accounting to ensure compliance with this subdivision. However, an unintentional error in addition or subtraction on an invoice or other form of accounting by a route driver of a distributor shall not be deemed a violation of this subdivision.

(4) For the purposes of this subdivision, the term ''type of container'' includes the amount of the redemption payment on containers under 24 ounces and on containers 24 ounces or more.

(b) To the extent technically and economically feasible, a dealer may separately identify the amount of any redemption payment on the customer cash register receipt provided to the consumer, by the dealer, that is applied to the purchase of a beverage container.

(c) (1) A dealer shall separately identify the amount of any redemption payment imposed on a beverage container in all advertising of beverage products and on the shelf labels of the dealer's establishment. The separate identification shall be accomplished by stating one of the following:

(A) The price of the beverage product plus a descriptive term, as described in paragraph (2).

(B) The price of the beverage product plus the amount of the applicable redemption payment and a descriptive term, as described in paragraph (2).

(C) The price of the beverage product plus the amount of the applicable redemption payment, a descriptive term, as described in paragraph (2), and the total of these two amounts.

(2) For purposes of paragraph (1), the redemption payment shall be identified by one of the following descriptive terms: ''California

Redemption Value," "CA Redemption Value," "CRV," "California Cash Refund," "CA Cash Refund," or any other message specified in Section 14561.

(3) A dealer shall not include the redemption payment in the total price of a beverage container in any advertising or on the shelf of the dealer's establishment.

(4) This subdivision applies only to a dealer at a dealer location with a sales and storage area totaling more than 4,000 square feet.

(5) The penalties specified in Sections 14591 and 14591.1 shall not be applied to a person who violates this subdivision.

(d) With regard to the sale of beer and other malt beverages or wine and distilled spirits cooler beverages, any amount of redemption payment imposed by this division is subject to Section 25509 of the Business and Professions Code.

SEC. 5. Section 14561 of the Public Resources Code is amended to read:

14561. (a) (1) A beverage manufacturer shall clearly indicate on every beverage container sold or offered for sale by that beverage manufacturer in this state the message "CA Redemption Value" or "California Redemption Value," by either printing or embossing the beverage container or by securely affixing a clear and prominent stamp, label, or other device to the beverage container.

(2) A beverage manufacturer may affix the message "CA Cash Refund" or "California Cash Refund" on a beverage container sold or offered for sale by the beverage manufacturer, instead of the message specified in paragraph (1), but the message shall be affixed in the manner prescribed in paragraph (1).

(b) Any refillable beverage container sold or offered for sale is exempt from this section. However, any beverage manufacturer or container manufacturer may place upon, or affix to, a refillable beverage container, any message that the manufacturer determines to be appropriate relating to the refund value of the beverage container.

(c) No person shall offer to sell, or sell to a consumer a beverage container subject to subdivision (a) that has not been labeled pursuant to this section, except for a refillable beverage container that is exempt from labeling pursuant to subdivision (b).

(d) The department may require that any beverage container intended for sale in this state be printed, embossed, stamped, labeled, or otherwise marked with a universal product code or similar machine-readable indicia.

(e) Any beverage container labeled with the message specified in subdivision (a) shall have the minimum redemption payment established pursuant to Section 14560, which shall be paid by the distributor to the department pursuant to Section 14574.

(f) To the extent not otherwise authorized by this section, a glass beverage container containing noncarbonated fruit drinks that contain any percentage of fruit juice, made subject to this division

pursuant to this act amending this section during the 1999 portion of the 1999–2000 Regular Session, may comply with the requirements of this section by embossing the container with the message described in paragraph (1) or (2) of subdivision (a).

(g) Notwithstanding any other requirement of this section, any beverage container that is included within the scope of this division on January 1, 2000, but that was not subject to this division before that date, shall be exempt from the labeling requirements of this section until January 1, 2001. However, even though these beverage containers are not required to bear the message required by this section from January 1, 2000, to January 1, 2001, inclusive, notwithstanding subdivision (c) of Section 14512, they shall be considered "empty beverage containers" for all of the purposes of this division during that period of time.

SEC. 6. Section 14575 of the Public Resources Code, as proposed to be added by Senate Bill 332, is repealed.

SEC. 7. Section 14575 is added to the Public Resources Code, to read:

14575. (a) If any type of empty beverage container with a refund value established pursuant to Section 14560 has a scrap value less than the cost of recycling, the department shall, on January 1, 2000, and on or before January 1 annually thereafter, establish a processing fee and a processing payment for the container, by the type of the material of the container.

(b) The processing payment shall be at least equal to the difference between the scrap value offered to a statistically significant sample of recyclers by willing purchasers, and except for the initial calculation made pursuant to subdivision (d), the sum of both of the following:

(1) The actual cost for certified recycling centers, excluding centers receiving a handling fee, of receiving, handling, storing, transporting, and maintaining equipment for each container sold for recycling or, only if the container is not recyclable, the actual cost of disposal, calculated pursuant to subdivision (c). The department shall determine the statewide weighted average cost to recycle each beverage container type, which shall serve as the actual recycling costs for purposes of paragraphs (3) and (4) of subdivision (c), by conducting a survey of the costs of a statistically significant sample of certified recycling centers, excluding those recycling centers receiving a handling fee, for receiving, handling, storing, transporting, and maintaining equipment.

(2) A reasonable financial return for recycling centers.

(c) The department shall base the processing payment pursuant to this section upon all of the following:

(1) Except as specified in paragraph (2), the department shall use the average scrap values paid to recyclers between October 1, 1998, and September 30, 1999, for the initial calculation and the same

12-month period directly preceding the year in which the processing fee is calculated for any subsequent calculation.

(2) For material types not included in the program on January 1, 1999, the department shall estimate the scrap value for the initial calculation based on a sample of average scrap values paid to recyclers between July 1, 1999, and September 30, 1999.

(3) Except as specified in subdivision (d), the department shall use the actual recycling costs for certified recycling centers, as determined pursuant to paragraph (1) of subdivision (b) by the department on or before January 1, 2000, for the initial calculation.

(4) The department shall make all subsequent determinations of the actual costs for certified recycling centers, pursuant to paragraph (1) of subdivision (b), on before January 1, 2001, and every third year thereafter.

(d) Except as provided in subparagraph (B) of paragraph (4), the department shall use the following cost data for certified recycling centers for the January 1, 2000, calculation:

(1) Eighty-five dollars and nineteen cents ($85.19) for each ton of glass containers.

(2) Four hundred seventeen dollars and ninety-six cents ($417.96) for each ton of bimetal containers.

(3) Six hundred forty-two dollars and sixty-nine cents ($642.69) for each ton of PET plastic containers.

(4) (A) Six hundred forty-two dollars and sixty-nine cents ($642.69) for each ton of non-PET plastic containers.

(B) Notwithstanding this subdivision, in calculating the January 1, 2001, processing payment for non-PET plastic containers, the department shall also use the same cost data specified in subparagraph (A).

(e) Except as specified in subdivision (f), the actual processing fee paid by beverage manufacturers shall equal 65 percent of the processing payment calculated pursuant to subdivision (b).

(f) The department, consistent with Section 14581 and subject to the availability of funds, shall reduce the processing fee paid by beverage manufacturers pursuant to subdivision (e) by expending funds in each material processing fee account, established pursuant to subparagraph (A) of paragraph (6) of subdivision (a) of Section 14581, so that the amount of the processing fee equals 25 percent of the processing payment calculated pursuant to subdivision (b).

(g) Prior to January 1, 2001, the department may adjust a processing fee established pursuant to this section for any plastic beverage container, if both of the following occur:

(1) The department determines that the average statewide scrap values paid by willing purchasers for that beverage container materials type are less than the average scrap values used as the basis for the processing fee calculation.

(2) The department determines that adjusting the processing fee is necessary to further the objectives of this division.

(h) (1) Except as provided in paragraphs (2) and (3), every beverage manufacturer shall pay to the department the applicable processing fee for each container sold or transferred to a distributor or dealer within 40 days of the sale in the form and in the manner which the department may prescribe.

(2) (A) Notwithstanding Section 14506, with respect to the payment of processing fees for beer and other malt beverages manufactured outside the state, the beverage manufacturer shall be deemed to be the person or entity named on the certificate of compliance issued pursuant to Section 23671 of the Business and Professions Code. If the department is unable to collect the processing fee from the person or entity named on the certificate of compliance, the department shall give written notice by certified mail to that person or entity. The notice shall state that the processing fee shall be remitted in full within 30 days of issuance of the notice or the person or entity shall not be permitted to offer that beverage brand for sale within the state. If the person or entity fails to remit the processing fee within 30 days of issuance of the notice, the department shall notify the Department of Alcoholic Beverage Control that the certificate holder has failed to comply, and the Department of Alcoholic Beverage Control shall prohibit the offering or sale of that beverage brand within the state.

(B) The department shall enter into a contract with the Department of Alcoholic Beverage Control, pursuant to Section 14536.5, concerning the implementation of this paragraph, which shall include a provision reimbursing the Department of Alcoholic Beverage Control for its costs incurred in implementing this paragraph.

(3) (A) Notwithstanding paragraph (1), a beverage manufacturer may, upon the approval of the department, elect to make a single annual payment of processing fees, if the beverage manufacturer's projected processing fees for a calendar year total less than one thousand dollars ($1,000).

(B) An annual processing fee payment made pursuant to this paragraph is due and payable on or before February 1 for every beverage container sold or transferred by the beverage manufacturer to a distributor or dealer in the previous calendar year.

(C) A beverage manufacturer shall notify the department of its intent to make an annual processing fee payment pursuant to this paragraph on or before January 31 of the calendar year preceding the year in which the payment will be due.

(4) The department shall pay the processing payments on redeemed containers to processors, in the same manner as it pays refund values pursuant to Sections 14573 and 14573.5. The processor shall pay the recycling center the entire processing payment representing the actual cost and financial return incurred by the recycling center, as specified in subdivision (a).

(i) When assessing processing fees pursuant to subdivision (a), the department shall assess the processing fee on each container sold, as provided in subdivision (e), by the type of material of the container.

(j) The container manufacturer, or a designated agent, shall pay to, or credit, the account of the beverage manufacturer in an amount equal to the processing fee.

(k) The department shall annually, on or before January 1, determine the statewide average scrap values paid to recyclers by processors for beverage containers during the 12-month period ending September 30. If the department determines that the statewide average scrap values paid for glass containers is 10 percent or more above or below the previous year's scrap value, the department shall adjust the processing payment to equal the difference between the cost of recycling and the new statewide average scrap value.

SEC. 8. Section 14581 of the Public Resources Code is amended to read:

14581. (a) Subject to the availability of funds, and pursuant to subdivision (c), the department shall expend the money set aside in the fund, pursuant to subdivision (c) of Section 14580 for the purposes of this section:

(1) Twenty-three million five hundred thousand dollars ($23,500,00) shall be expended annually for the payment of handling fees required pursuant to Section 14585.

(2) Fifteen million dollars ($15,000,000) shall be expended annually for payments for curbside programs and neighborhood dropoff programs pursuant to Section 14549.6.

(3) (A) Fifteen million dollars ($15,000,000), plus the proportional share of the cost-of-living adjustment, as provided in subdivision (b), shall be expended annually in the form of grants for beverage container litter reduction programs and recycling programs issued to either of the following:

(i) Certified community conservation corps, that were in existence on September 30, 1999, or that are formed subsequent to that date, that are designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the most recent census, of more than 250,000 persons.

(ii) Community conservation corps, that are designated by a county to perform litter abatement, recycling, and related activities, and are certified by the California Conservation Corps as having operated for a minimum of two years and as meeting all other criteria of Section 14507.5.

(B) Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(4) (A) Ten million five hundred thousand dollars ($10,500,000) may be expended annually for payments of five thousand dollars

($5,000) to cities and ten thousand dollars ($10,000) for payments to counties for beverage container recycling and litter cleanup activities, or the department may calculate the payments to counties and cities on a per capita basis, and may pay whichever amount is greater, for those activities.

(B) Eligible activities for the use of these funds may include, but are not necessarily limited to, support for new or existing curbside recycling programs, neighborhood dropoff recycling programs, public education promoting beverage container recycling, litter prevention, and cleanup, cooperative regional efforts among two or more cities or counties, or both, or other beverage container recycling programs.

(C) These funds may not be used for activities unrelated to beverage container recycling or litter reduction.

(D) To receive these funds, a city, county, or city and county shall fill out and return a funding request form to the Department of Conservation. The form shall specify the beverage container recycling or litter reduction activities for which the funds will be used.

(E) The Department of Conservation shall annually prepare and distribute a funding request form to each city, county, or city and county. The form shall specify the amount of beverage container recycling and litter cleanup funds for which the jurisdiction is eligible. The form shall not exceed one double-sided page in length, and may be submitted electronically. If a city, county, or city and county does not return the funding request form within 90 days of receipt of the form from the department, the city, county, or city and county is not eligible to receive the funds for that funding cycle.

(F) For the purposes of this paragraph, per capita population shall be based on the population of the incorporated area of a city or city and county and the unincorporated area of a county. The department may withhold payment to any city, county, or city and county that has prohibited the siting of a supermarket site, caused a supermarket site to close its business, or adopted a land use policy that restricts or prohibits the siting of a supermarket site within its jurisdiction.

(5) (A) Five hundred thousand dollars ($500,000) may be expended annually in the form of grants for beverage container recycling and litter reduction programs.

(B) Up to a total of six million eight hundred forty thousand dollars ($6,840,000) shall be paid to the City of San Diego, between January 1, 2000, and January 1, 2004, for a curbside recycling program conducted pursuant to Section 14549.7.

(6) (A) The department shall expend the amount necessary to pay the processing payment established pursuant to subdivision (b) of Section 14575. The department shall establish separate processing fee accounts in the fund for each beverage container material type for which a processing payment and processing fee is calculated

pursuant to Section 14575, into which account shall be deposited both of the following:

(i) All amounts paid as processing fees for each beverage container material type pursuant to subdivision (g) of Section 14575.

(ii) Funds equal to pay 75 percent of the processing payments established in subdivision (b) of Section 14575, in order to reduce the processing fee to the level provided in subdivision (f) of Section 14575.

(B) Notwithstanding Section 13340 of the Government Code, the money in each processing fee account is hereby continuously appropriated to the department for expenditure without regard to fiscal year, for purposes of making processing payments, and reducing processing fees, pursuant to Section 14575.

(7) (A) Up to ten million dollars ($10,000,000) shall be expended by the department between January 1, 2000, and January 1, 2002, for the purposes of undertaking a statewide public education and information campaign aimed at promoting increased recycling of beverage containers.

(B) Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2002, the department shall provide a report to the Legislature on the impact of the statewide public education and information campaign and make recommendations for any future campaigns.

(8) Up to three million dollars ($3,000,000) shall be expended annually for the payment of quality glass incentive payments pursuant to Section 14549.1.

(9) (A) Three hundred thousand dollars ($300,000) shall be expended annually by the department, until January 1, 2003, pursuant to a cooperative agreement entered into between the department and Keep California Beautiful, a nonprofit 501(c)(3) organization chartered by the State of California in 1990, for the purpose of conducting statewide public education campaigns aimed at preventing and cleaning up beverage containers and related litter. The campaigns shall include, but not be limited to, coordination of Keep California Beautiful month.

(B) Prior to making an expenditure pursuant to this paragraph, the department shall enter into a cooperative agreement with Keep California Beautiful.

(C) As part of the cooperative agreement, Keep California Beautiful shall provide the department with an annual campaign plan and budget, and a report of previous year campaign activities.

(D) On or before July 1, 2002, the department shall make a recommendation to the Legislature on future funding for beverage container litter prevention and cleanup activities by Keep California Beautiful.

(b) The fifteen million dollars ($15,000,000) that is set aside pursuant to paragraph (3) of subdivision (a), is a base amount that the department shall adjust annually to reflect any increases or

decreases in the cost of living, as measured by the Department of Labor, or a successor agency, of the federal government.

(c) (1) The department shall review all funds on a quarterly basis to ensure that there are adequate funds to make the payments specified in this section and the processing fee reductions required pursuant to Section 14575.

(2) If the department determines, pursuant to a review made pursuant to paragraph (1), that there may be inadequate funds to pay the payments required by this section and the processing fee reductions required pursuant to Section 14575, the department shall immediately notify the appropriate policy and fiscal committees of the Legislature regarding the inadequacy.

(3) On or before 180 days after the notice is sent pursuant to paragraph (2), the department may reduce or eliminate expenditures, or both, from the funds as necessary, according to the procedure set forth in subdivision (d).

(d) If the department determines that there are insufficient funds to make the payments specified pursuant to this section and Section 14575, the department shall reduce all payments proportionally.

(e) Prior to making an expenditure pursuant to paragraph (7) of subdivision (a), the department shall convene an advisory committee consisting of representatives of the beverage industry, beverage container manufacturers, environmental organizations, the recycling industry, nonprofit organizations, and retailers, to advise the department on the most cost-effective and efficient method of the expenditure of the funds for that education and information campaign.

SEC. 9. Notwithstanding Section 7550.5 of the Government Code, the Department of Conservation, using funds from the California Beverage Container Recycling Fund, shall contract with the University of California for preparation and submittal to the department, on or before January 1, 2002, of a study that the department shall transmit to the Governor and the Legislature on or before that date, that does all of the following:

(a) Reviews whether the inclusion of plastic beverage containers made of resins other than polyethelene terathate has substantially increased the recycling rate of those containers.

(b) Compares the recycling rates for like types of beverage containers covered by the California Beverage Container Recycling and Litter Reduction Act with like types of beverage containers not covered by the act.

(c) Compares the net cost of recycling containers covered by the act at recycling centers, supermarket sites, and curbside recycling programs, and estimates the cost of collection and disposal of those containers not covered by the act and not recycled.

(d) Compares the economic benefit and impact on the state's economy of the act with an "Oregon style" nickel deposit law, and with the situation if the act were repealed.

(e) Reports the scope of curbside recycling in California, along with an evaluation of the benefits and cost impact of the act on curbside recycling programs.

(f) Recommends any modifications to the act, including, but not limited to, the fiscal and recycling impact of repealing the act; the fiscal and recycling impact of expanding the act; and any products or materials that should be included or excluded from the coverage of the act.

SEC. 10. The Legislature finds and declares that the changes made in this bill to Sections 14550, 14560.5, 14561, and 14581 of the Public Resources Code incorporate the amendments to those sections by SB 332, and make additional changes, and it is the intent of the Legislature that this bill be enacted after SB 332. It is further the intent of the Legislature that if this bill is enacted after SB 332, Section 2 of the bill, which adds Section 14549.1 to the Public Resources Code, and Section 7 of this bill, which adds Section 14575 to the Public Resources Code, shall both take effect, and Sections 14549.1 and 14575 of the Public Resources Code, as proposed to be added by SB 332, shall not become operative.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 12. This act shall only become operative if Senate Bill 332 of the 1999–2000 Regular Session of the Legislature is enacted and becomes effective on or before January 1, 2000.

CHAPTER 818

An act to add Section 5273.5 to the Business and Professions Code, relating to outdoor advertising.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 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 Outdoor Advertising Act (Chapter 2 (commencing with Section 5200) of Division 3 of the Business and Professions Code) regulates the placement of advertising displays along highways and provides limited exemptions from its provisions.

(b) Section 5273 of the Business and Professions Code provides a limited exemption from the act by authorizing a city to advertise a redevelopment project with a sign located adjacent to a highway, but only if the sign is located within the boundary limits of the redevelopment project and advertises a single redevelopment project that is located in one contiguous area.

(c) The practical effect of Section 5273 of the Business and Professions Code is that its exemption is limited to cities that have a project that is located adjacent to a highway.

(d) Certain cities have from two to five different redevelopment projects that usually are not located in one contiguous area, and have redevelopment projects that are not located adjacent to a highway.

(e) Accordingly, a provision should be added to the Business and Professions Code to authorize certain cities to use the same sign to advertise all redevelopment projects that are within that city, regardless of whether the projects are contiguous to each other or are located adjacent to a highway.

SEC. 2. Section 5273.5 is added to the Business and Professions Code, to read:

5273.5. (a) Notwithstanding Section 5273, for the purposes of this chapter, in the City of Buena Park in Orange County, the Cities of Commerce, Covina, and South Gate in Los Angeles County, and the City of Victorville in San Bernardino County, advertising displays advertising those businesses and activities developed within the boundary limits of, and as a part of, any redevelopment agency project area or areas may, with the consent of the redevelopment agency governing the project area, be considered to be on the premises anywhere within the legal boundaries of the redevelopment agency's project area or areas for a period not to exceed 10 years or the completion of the project, whichever occurs first, after which Sections 5272 and 5405 apply, unless an arrangement has been made for extension of the period between the redevelopment agency and the department for good cause.

(b) The governing body of a redevelopment agency in the cities set forth in subdivision (a), upon approving the purchase, lease, or other authorization for the erection of an advertising display pursuant to this section, shall prepare, adopt, and submit to the department an application for the issuance of a permit that, at a minimum, includes a finding that the advertising display would not result in a concentration of displays that will have a negative impact on the safety or aesthetic quality of the community. The department shall only deny the application if the proposed structure violates Sections 5400 to 5405, inclusive, or subdivision (d) of Section 5408, or if the display would cause a reduction in federal-aid highway funds as provided in Section 131 of Title 23 of the United States Code.

SEC. 3. Due to the unique circumstances concerning the location of redevelopment projects in the City of Buena Park in Orange County, the Cities of Commerce, Covina, and South Gate in Los

Angeles County, and the City of Victorville in San Bernardino County, in relation to the nearest highway, and the need to advertise these projects, it is necessary that an exemption from the Outdoor Advertising Act be provided for those projects, and 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.

CHAPTER 819

An act to add Chapter 1 (commencing with Section 125700) to Part 8 of Division 106 of the Health and Safety Code, relating to osteoporosis, and making an appropriation therefor.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Osteoporosis is a disease that causes the bones to lose mass and break easily.

(b) More than 28 million persons are affected by osteoporosis in the United States.

(c) According to a national report, more than five million Californians, 50 years of age or older, either have osteoporosis or are at high risk of developing this debilitating disease. By the year 2015, this number is projected to rise to 8.5 million Californians.

(d) Although osteoporosis is most prevalent among women, men suffer from the disease as well.

(e) In May 1998, the National Institute of Child Health and Human Development identified osteoporosis as a preventable health issue for adolescents.

SEC. 2. Chapter 1 (commencing with Section 125700) is added to Part 8 of Division 106 of the Health and Safety Code, to read:

CHAPTER 1. CALIFORNIA OSTEOPOROSIS PREVENTION AND EDUCATION ACT

125700. This chapter shall be known and may be cited as the "California Osteoporosis Prevention and Education Act."

125701. It is the intent of the Legislature to promote public awareness of the causes of and options for the prevention of osteoporosis, to educate the public regarding the prevention and management of osteoporosis, and to improve management of osteoporosis, and thereby to minimize the impact of this debilitating disease.

125702. There is hereby created within the department the California Osteoporosis Prevention and Education Program. The target population for this program shall be persons of age 50 years or older.

125703. The department shall, in consultation with the California Department of Aging, do all of the following in the establishment of the program:

(a) Promote public awareness concerning the causes and nature of, the personal risk factors for, the value of prevention of, and the options for management of osteoporosis.

(b) Work with other state and local agencies to promote osteoporosis educational and training programs for physicians and other health professionals.

(c) Convene an advisory panel of individuals with knowledge and expertise in osteoporosis research, women's health, healthy aging, prevention strategies, educational programs, and consumer needs to guide program development.

125704. In consultation with the advisory panel convened pursuant to subdivision (c) of Section 125703, the department shall develop effective protocols for the prevention of falls and fractures and establish these protocols in community practice to improve the prevention and management of osteoporosis.

125710. The director shall seek private sector financial support, grants, and other appropriate moneys to support the California Osteoporosis Prevention and Education Program.

SEC. 3. The sum of two hundred fifty thousand dollars ($250,000) is hereby appropriated from the General Fund to the State Department of Health Services to implement the California Osteoporosis Prevention and Education Act, Chapter 1 (commencing with Section 125700) of Part 8 of Division 106 of the Health and Safety Code.

CHAPTER 820

An act to add and repeal Section 14007.9 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 14007.9 is added to the Welfare and Institutions Code, to read:

14007.9. (a) The department shall adopt the option made available under Section 1902(a)(10)(A)(ii)(XIII) of the federal Social Security Act (42 U.S.C. Sec. 1396a(a)(10)(A)(ii)(XIII). In

order to be eligible for benefits under this section, an individual shall be required to meet all of the following requirements:

(1) His or her net countable income is less than 250 percent of the federal poverty level for one person or, if the deeming of spousal income applies to the individual, his or her net countable income is less than 250 percent of the federal poverty level for two persons.

(2) He or she is disabled under Title II of the Social Security Act (Subch. 2 (commencing with Sec. 401), Ch. 7, Title 42 U.S.C.), Title XVI of the Social Security Act (Subch. 16 (commencing with Sec. 1381), Ch. 7, Title 42, U.S.C.), or Section 1902(v) of the Social Security Act (42 U.S.C. Sec. 1396a(v)). An individual shall be determined to be eligible under this section without regard to his or her ability to engage in, or actual engagement in, substantial gainful activity, as defined in Section 223(d)(4) of the Social Security Act (42 U.S.C. Sec. 423(d)(4)).

(3) Except as otherwise provided in this section, his or her net nonexempt resources, which shall be determined in accordance with the methodology used under Title XVI of the federal Social Security Act (42 U.S.C. Sec. 1381 et seq.), are not in excess of the limits provided for under those provisions.

(b) (1) Countable income shall be determined under Section 1612 of the Social Security Act (42 U.S.C. Sec. 1382a), except that the individual's disability income, including all federal and state disability benefits and private disability insurance, shall be exempted. Resources excluded under Section 1613 of the Social Security Act (42 U.S.C. Sec. 1382b) shall be disregarded.

(2) Resources in the form of employer or individual retirement arrangements authorized under the Internal Revenue Code shall be exempted as authorized by Section 1902(r) of the Social Security Act (42 U.S.C. Sec. 1396a(r)).

(c) Medi-Cal benefits provided under this chapter pursuant to this section shall be available in the same amount, duration, and scope as those benefits are available for persons who are eligible for Medi-Cal benefits as categorically needy persons and as specified in Section 14007.5.

(d) Individuals eligible for Medi-Cal benefits under this section shall be subject to the payment of premiums determined under this subdivision. The department shall establish sliding-scale premiums that are based on countable income, with a minimum premium of twenty dollars ($20) per month and a maximum premium of two hundred fifty dollars ($250) per month, and shall, by regulations, annually adjust the premiums. Prior to adjustment of any premiums pursuant to this subdivision, the department shall submit a report of proposed premium adjustments to the appropriate committees of the Legislature as part of the annual budget act process.

(e) The department shall adopt regulations specifying the process for discontinuance of eligibility under this section for nonpayment of premiums for more than two months by a beneficiary.

(f) In order to implement the collection of premiums under this section, the department may develop and execute a contract with a public or private entity to collect premiums, or may amend any existing or future premium-collection contract that it has executed. Notwithstanding any other provision of law, any contract developed and executed or amended pursuant to this subdivision is exempt from the approval of the Director of General Services and from the Public Contract Code.

(g) 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 any regulatory action, 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.

(h) 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 is available pursuant to Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.).

(i) Subject to subdivision (h), this section shall be implemented commencing April 1, 2000.

(j) This section shall become inoperative on April 1, 2005, and as of January 1, 2006, is repealed, unless a later enacted statute that is enacted on or before January 1, 2006, extends or deletes the dates on which it becomes inoperative and is repealed.

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 821

An act to add and repeal Section 12209 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 12209 is added to the Revenue and Taxation Code, to read:

12209. (a) For each year beginning on or after January 1, 1999, and before January 1, 2002, there shall be allowed as a credit against the amount of tax, as defined in Section 28 of Article XIII of the California Constitution, an amount equal to 20 percent of the amount of each qualified deposit made by a taxpayer during the year into a community development financial institution.

(b) For purposes of determining any tax that may be imposed under Section 685 of the Insurance Code on a taxpayer not organized under the laws of this state, the amount of the credit allowed by subdivision (a) shall be treated as a tax paid under Section 12201 or Section 28 of Article XIII of the California Constitution.

(c) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the California Organized Investment Network of the Department of Insurance, or its successor, certifies that the deposit described in subdivision (a) qualifies for the credit under this section and certifies the total amount of the credit allocated to the taxpayer pursuant to this section. The aggregate amount of qualified deposits made by all taxpayers pursuant to this section, Section 17053.57, and Section 23657 shall not exceed ten million dollars ($10,000,000) for each calendar year.

(d) The community development financial institution shall do all of the following:

(1) Apply to the California Organized Investment Network, or its successor, for certification of its status as a community development financial institution.

(2) Apply to the California Organized Investment Network, or its successor, on behalf of the taxpayer for certification of the credit amount allocated to the taxpayer prior to accepting any qualified deposit from the taxpayer.

(3) Transmit to the taxpayer and the California Organized Investment Network, or its successor, certification that a qualified deposit has been accepted, the amount of the deposit or equity investment, and the amount of the credit to which the taxpayer is entitled, and retain a copy of the certification.

(4) Obtain the taxpayer's California company identification number for tax administration purposes and provide this information to the California Organized Investment Network, or its successor, with the transmittal required in paragraph (3).

(5) Provide an annual listing to the board, in the form and manner agreed upon by the board and the California Organized Investment Network, or its successor, of the names and taxpayer's California company identification numbers of any taxpayer who makes any withdrawal or partial withdrawal of a qualified deposit before the expiration of 60 months from the date of the qualified deposit.

(e) The California Organized Investment Network, or any successor thereof, shall do all of the following:

(1) Accept applications for certification from financial institutions and issue certificates that the applicant is a community development financial institution qualified to receive qualified deposits.

(2) Accept applications for certification from any community development financial institution on behalf of the taxpayer and issue certificates to taxpayers in an aggregate amount that shall not exceed the limit specified in subdivision (c). The certificate shall include the amount eligible to be made as a deposit or equity investment that qualifies for the credit and the total amount of the credit to which the taxpayer is entitled for the year. Certificates shall be issued in the order that the applications are received.

(3) Provide an annual listing to the board, in the form or manner agreed upon by the board and the California Organized Investment Network, or its successor, of the taxpayers who were issued certificates, their respective National Association of Insurance Commissioners company number and employer's tax identification number, the amount of the qualified deposit made by each taxpayer, and the total amount of qualified deposits.

(f) For purposes of this section:

(1) "Qualified deposit" means a deposit that does not earn interest, or an equity investment, that is equal to or greater than fifty thousand dollars ($50,000) and is made for a minimum duration of 60 months.

(2) "Community development financial institution" means a private financial institution located in this state that is certified by the California Organized Investment Network, or its successor, that has community development as its primary mission, and that lends in urban, rural, or reservation-based communities in this state. A community development financial institution may include a community development bank, a community development loan fund, a community development credit union, a microenterprise fund, a community development corporation-based lender, and a community development venture fund.

(g) (1) If a qualified deposit is withdrawn before the end of the 60th month and not redeposited or reinvested in another community development financial institution within 60 days, there shall be added to the "tax," as defined in Section 28 of Article XIII of the California Constitution, for the year in which the withdrawal occurs, the entire amount of any credit previously allowed under this section.

(2) If a qualified deposit is reduced before the end of the 60th month, but not below fifty thousand dollars ($50,000), there shall be added to the "tax," as defined in Section 28 of Article XIII of the California Constitution, for the income year in which the reduction occurs, an amount equal to 20 percent of the total reduction for the year.

(h) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" for the

next four years, or until the credit has been exhausted, whichever occurs first.

(i) This section shall remain in effect only until December 31, 2002, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (h), until the credit is exhausted.

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 822

An act to add Section 30609.5 to the Public Resources Code, relating to coastal resources.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 30609.5 is added to the Public Resources Code, to read:

30609.5. (a) Except as provided in subdivisions (b) and (c), no state land that is located between the first public road and the sea, with an existing or potential public accessway to or from the sea, or that the commission has formally designated as part of the California Coastal Trail, shall be transferred or sold by the state to any private entity unless the state retains a permanent property interest in the land adequate to provide public access to or along the sea. In any transfer or sale of real property by a state agency to a private entity or person pursuant to this section, the instrument of conveyance created by the state shall require that the private entity or person or the entity or person's successors or assigns manage the property in such a way as to ensure that existing or potential public access is not diminished. The instrument of conveyance shall further require that any violation of this management requirement shall result in the reversion of the real property to the state.

(b) This section shall not apply to the transfer of state land to a nonprofit organization that exists for the purposes of preserving lands for public use and enjoyment and meets the requirements of subdivision (b) of Section 831.5 of the Government Code.

(c) Notwithstanding the provisions of subdivision (a), state lands between the first public road and the sea, that are under the possession and control of the Department of Parks and Recreation or the State Coastal Conservancy, may be transferred or sold if the department or the conservancy makes one or more of the following findings at a noticed public hearing relating to the transfer or sale of the property:

(1) The state has retained or will retain, as a condition of the transfer or sale, permanent property interests on the land providing public access to or along the sea.

(2) Equivalent or greater public access to the same beach or shoreline area is provided for than would be feasible if the land were to remain in state ownership.

(3) The land to be transferred or sold is an environmentally sensitive area with natural resources that would be adversely impacted by public use, and the state will retain permanent property interests in the land that may be necessary to protect, or otherwise provide for the permanent protection of, those resources prior to or as a condition of the transfer or sale.

(4) The land to be transferred or sold has neither existing nor potential public accessway to the sea.

(d) Nothing in this section shall be construed to interfere with the management responsibilities of state resource agencies, including, but not limited to, the responsibilities to ensure public safety and implement the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(e) As used in this section, "state land" means any real property in which the state or any state agency has an ownership interest including, but not limited to, a fee, title, easement, deed restriction, or other interest in land. It does not include land in which a city, county, city and county, or district has an ownership interest.

(f) Nothing in this section is intended to restrict a private property owner's right to sell or transfer private property.

CHAPTER 823

An act to amend Sections 8201, 8202, and 8212 of, and to add Section 8226 to, the Education Code, and to amend Sections 1596.859 and 1596.890 of the Health and Safety Code, relating to child care.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. This act shall be known and may be cited as "Oliver's Law."

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

(1) The Education Code and the Health and Safety Code provide for the licensure of child day care facilities and providers. Parents and families of children who utilize licensed child care can make more informed child care choices by investigating, reviewing, and

evaluating all available information regarding licensed child care facilities and providers.

(2) Child care resource and referral agencies are in a unique position to provide notification to parents and families of children who utilize licensed child care of their right to review certain child care licensing files.

(b) It is, therefore, the intent of the Legislature to encourage parental responsibility to thoroughly investigate, review, and evaluate all available information relating to licensed child care providers by providing notice to parents and families of children who utilize licensed child care of their right to review certain child care licensing files.

SEC. 3. Section 8201 of the Education Code is amended to read:

8201. The purpose of this chapter is as follows:

(a) To provide a comprehensive, coordinated, and cost-effective system of child care and development services for children to age 14 and their parents, including a full range of supervision, health, and support services through full- and part-time programs.

(b) To encourage community-level coordination in support of child care and development services.

(c) To provide an environment that is healthy and nurturing for all children in child care and development programs.

(d) To provide the opportunity for positive parenting to take place through understanding of human growth and development.

(e) To reduce strain between parent and child in order to prevent abuse, neglect, or exploitation.

(f) To enhance the cognitive development of children, with particular emphasis upon those children who require special assistance, including bilingual capabilities to attain their full potential.

(g) To establish a framework for the expansion of child care and development services.

(h) To empower and encourage parents and families of children who require child care services to take responsibility to review the safety of the child care program or facility and to evaluate the ability of the program or facility to meet the needs of the child.

SEC. 4. Section 8202 of the Education Code is amended to read:

8202. It is the intent of the Legislature that:

(a) All families have access to child care and development services, through resource and referral services, where appropriate, regardless of ethnic status, cultural background, or special needs. It is further the intent that subsidized child care and development services be provided to persons meeting the eligibility criteria established under this chapter to the extent funding is made available by the Legislature and Congress.

(b) The healthy physical, cognitive, social, and emotional growth and development of children be supported.

(c) Families achieve and maintain their personal, social, economic, and emotional stability through an opportunity to attain financial stability through employment, while maximizing growth and development of their children, and enhancing their parenting skills through participation in child care and development programs.

(d) Community-level coordination in support of child care and development services be encouraged.

(e) Families have a choice of programs that allow for maximum involvement in planning, implementation, operation, and evaluation of child care and development programs.

(f) Parents and families be fully informed of their rights and responsibilities to evaluate the quality and safety of child care programs, including, but not limited to, their right to inspect child care licensing files.

(g) Planning for expansion of child care and development programs be based on ongoing local needs assessments.

(h) The Superintendent of Public Instruction, in providing funding to child care and development agencies, promote a range of services which will allow parents the opportunity to choose the type of care most suited to their needs. The program scope may include the following:

(1) Programs located in centers, family day care homes, or in the child's own home.

(2) Services provided part-day, full-day, and during nonstandard hours including weekend care, night and shift care, before and after school care, and care during holidays and vacation.

(3) Child care services provided for infants, preschool, and schoolage children.

(i) The Superintendent of Public Instruction be responsible for the establishment of a public hearing process or other public input process that ensures the participation of those agencies directly affected by a particular section or sections of this chapter.

SEC. 4.5. Section 8202 of the Education Code is amended to read:

8202. It is the intent of the Legislature that:

(a) All families have access to child care and development services, through resource and referral services, where appropriate, regardless of ethnic status, cultural background, or special needs. It is further the intent that subsidized child care and development services be provided to persons meeting the eligibility criteria established under this chapter to the extent funding is made available by the Legislature and Congress.

(b) The healthy physical, cognitive, social, and emotional growth and development of children be supported.

(c) Families achieve and maintain their personal, social, economic, and emotional stability through an opportunity to attain financial stability through employment, while maximizing growth and development of their children, and enhancing their parenting skills through participation in child care and development programs.

(d) Community-level coordination in support of child care and development services be encouraged.

(e) Families have, and are informed that they have, a choice of programs that allow for maximum involvement in planning, implementation, operation, and evaluation of child care and development programs and that they be given the maximum possible information about the availability, cost, operation, and effectiveness of each option.

(f) Parents and families be fully informed of their rights and responsibilities to evaluate the quality and safety of child care programs, including, but not limited to, their right to inspect child care licensing files.

(g) Planning for expansion of child care and development programs be based on ongoing local needs assessments.

(h) The Superintendent of Public Instruction, in providing funding to child care and development agencies, promote a range of services which will allow parents the opportunity to choose the type of care most suited to their needs. The program scope may include the following:

(1) Programs located in centers, family day care homes, or in the child's own home.

(2) Services provided part-day, full-day, and during nonstandard hours including weekend care, night and shift care, before and after school care, and care during holidays and vacation.

(3) Child care services provided for infants, preschool, and schoolage children.

(i) The Superintendent of Public Instruction be responsible for the establishment of a public hearing process or other public input process that ensures the participation of those agencies directly affected by a particular section or sections of this chapter.

SEC. 5. Section 8212 of the Education Code is amended to read:

8212. For purposes of this article, child care resource and referral programs, established to serve a defined geographic area, shall provide the following services:

(a) Identification of the full range of existing child care services through information provided by all relevant public and private agencies in the areas of service, and the development of a resource file of those services which shall be maintained and updated at least quarterly. These services shall include, but not be limited to, family day care homes, public and private day care programs, full-time and part-time programs, and infant, preschool, and extended care programs.

The resource file shall include, but not be limited to, the following information:

(1) Type of program.

(2) Hours of service.

(3) Ages of children served.

(4) Fees and eligibility for services.

(5) Significant program information.

(b) (1) Establishment of a referral process which responds to parental need for information and which is provided with full recognition of the confidentiality rights of parents. Resource and referral programs shall make referrals to licensed child care facilities. Referrals shall be made to unlicensed care facilities only if there is no requirement that the facility be licensed. The referral process shall afford parents maximum access to all referral information. This access shall include, but is not limited to, telephone referrals to be made available for at least 30 hours per week as part of a full week of operation. Every effort shall be made to reach all parents within the defined geographic area, including, but not limited to, any of the following:

(A) Toll-free telephone lines.

(B) Office space convenient to parents and providers.

(C) Referrals in languages which are spoken in the community.

Each child care resource and referral agency shall publicize its services through all available media sources, agencies, and other appropriate methods.

(2) (A) Provision of information to any person who requests a child care referral of his or her right to view the licensing information of a licensed child day care facility required to be maintained at the facility pursuant to Section 1596.859 of the Health and Safety Code and to access any public files pertaining to the facility that are maintained by the State Department of Social Services Community Care Licensing Division.

(B) A written or oral advisement in substantially the following form will comply with the requirements of subparagraph (A):

"State law requires licensed child day care facilities to make accessible to the public a copy of any licensing report pertaining to the facility that documents a facility visit or a substantiated complaint investigation. In addition, a more complete file regarding a child care licensee may be available at an office of the State Department of Social Services Community Care Licensing Division. You have the right to access any public information in these files."

(c) Maintenance of ongoing documentation of requests for service tabulated through the internal referral process. The following documentation of requests for service shall be maintained by all child care resource and referral agencies:

(1) Number of calls and contacts to the child care information and referral agency or component.

(2) Ages of children served.

(3) Time category of child care request for each child.

(4) Special time category, such as nights, weekends, and swing shift.

(5) Reason that the child care is needed.

This information shall be maintained in a manner that is easily accessible for dissemination purposes.

(d) Provision of technical assistance to existing and potential providers of all types of child care services. This assistance shall include, but not be limited to:

(1) Information on all aspects of initiating new child care services including, but not limited to, licensing, zoning, program and budget development, and assistance in finding this information from other sources.

(2) Information and resources which shall help existing child care services providers to maximize their ability to serve the children and parents of their community.

(3) Dissemination of information on current public issues affecting the local and state delivery of child care services.

(4) Facilitation of communication between existing child care and child-related services providers in the community served.

Services prescribed by this section shall be provided in order to maximize parental choice in the selection of child care to facilitate the maintenance and development of child care services and resources.

SEC. 6. Section 8226 is added to the Education Code, to read:

8226. (a) When making referrals, every agency operating pursuant to this article shall provide information to any person who requests a child care referral of his or her right to view the licensing information of a licensed child day care facility required to be maintained at the facility pursuant to Section 1596.859 of the Health and Safety Code and to access any public files pertaining to the facility that are maintained by the State Department of Social Services Community Care Licensing Division.

(b) A written or oral advisement in substantially the following form will comply with the requirements of subdivision (a):

"State law requires licensed child day care facilities to make accessible to the public a copy of any licensing report pertaining to the facility that documents a facility visit or a substantiated complaint investigation. In addition, a more complete file regarding a child care licensee may be available at an office of the State Department of Social Services Community Care Licensing Division. You have the right to access any public information in these files."

SEC. 7. Section 1596.859 of the Health and Safety Code is amended to read:

1596.859. (a) (1) Each licensed child day care facility shall make accessible to the public a copy of any licensing report pertaining to the facility that documents a facility visit or a substantiated complaint investigation. An individual report shall not be required to be maintained beyond three years from the date of issuance, and shall not include any information that would not have been accessible to the public through the State Department of Social Services Community Care Licensing Division.

(2) (A) Every child care resource and referral program established pursuant to Article 2 (commencing with Section 8210) of

Chapter 2 of Part 6 of the Education Code, and every alternative payment program established pursuant to Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code shall advise every person who requests a child care referral of his or her right to the licensing information of a licensed child day care facility required to be maintained at the facility pursuant to this section and to access any public files pertaining to the facility that are maintained by the State Department of Social Services Community Care Licensing Division.

(B) A written or oral advisement in substantially the following form will comply with the requirements of subparagraph (A):

"State law requires licensed child day care facilities to make accessible to the public a copy of any licensing report pertaining to the facility that documents a facility visit or a substantiated complaint investigation. In addition, a more complete file regarding a child care licensee may be available at an office of the State Department of Social Services Community Care Licensing Division. You have the right to access any public information in these files."

(b) Within 30 days after the date specified by the department for a licensee to correct a deficiency, the department shall provide the licensee with a licensing report or other appropriate document verifying compliance or noncompliance. Notwithstanding any other provision of law, and with good cause, the department may provide the licensee with an alternate timeframe for providing the licensing report or other appropriate document verifying compliance or noncompliance. If the department provides the licensee with an alternate timeframe, it shall also provide the reasons for the alternate timeframe, in writing. The licensee may make this documentation available to the public.

SEC. 8. Section 1596.890 of the Health and Safety Code is amended to read:

1596.890. (a) Any person who willfully or repeatedly violates any provision of this chapter, or any rule or regulation promulgated under this chapter is guilty of a misdemeanor. Upon conviction thereof, such a person shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail for a period not to exceed 180 days, or by both the fine and imprisonment. The operation of a child day care facility without a license issued pursuant to this chapter shall make the owner or operator, or both, subject to a summons to appear in court.

(b) Notwithstanding subdivision (a) or any other provision of law, the sole sanction for failure of a resources and referral agency or an alternative payment program to comply with paragraph (2) of subdivision (a) of Section 1596.859 shall be set forth in the "Funding Terms and Conditions" agreement between the affected agency or program and the State Department of Education.

SEC. 9. Section 4.5 of this bill incorporates amendments to Section 8202 of the Education Code proposed by both this bill and SB

1249. 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 8202 of the Education Code, and (3) this bill is enacted after SB 1249, in which case Section 4 of this bill shall not become operative.

CHAPTER 824

An act to add Section 96.18 to the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 96.18 is added to the Revenue and Taxation Code, to read:

96.18. (a) (1) Notwithstanding any other provision of this chapter, the Auditor for the County of San Diego shall, in allocating ad valorem property tax revenues in accordance with subdivision (a) of Section 96.1 in each of the 1999–2000, 2000–01, and 2001–02 fiscal years, do both of the following:

(A) Decrease the total amount of ad valorem property tax revenue otherwise deemed allocated to the County of San Diego in the prior fiscal year by an amount, not to exceed three million dollars ($3,000,000), as specified in an ordinance or resolution as described in subdivision (b).

(B) Increase the total amount of ad valorem property tax revenue otherwise deemed allocated to the county free library in the prior fiscal year by an amount equal to the amount of the decrease required by subparagraph (A).

(2) Notwithstanding any other provision of this chapter, in each of the 1999–2000, 2000–01, and 2001–02 fiscal years only, the auditor shall allocate the "annual tax increment" pursuant to Section 96.5 in those amounts that would be so allocated if no reduction or increase had been required in any fiscal year pursuant to paragraph (1). In the 2002–03 fiscal year and each fiscal year thereafter, the auditor shall allocate the "annual tax increment" pursuant to Section 96.5 in those amounts that fully reflect any increase or decrease required in any fiscal year by paragraph (1).

(b) Subdivision (a) shall not become operative unless the Board of Supervisors for the County of San Diego adopts, with the approval of a majority of its entire membership, an ordinance or resolution declaring that the subdivision is operative. Any ordinance or resolution that is adopted pursuant to the preceding sentence shall do both of the following:

(1) Specify either the amount that is to be reallocated in accordance with paragraph (1) of subdivision (a) in each fiscal year described in that subdivision, or a procedure for determining that reallocation amount for each of those same fiscal years.

(2) Prohibit the total of the amounts reallocated in accordance with paragraph (1) of subdivision (a) from exceeding nine million dollars ($9,000,000).

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 faced by the county free library in the County of San Diego in adequately funding a minimum level of library services.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide the elected officials of the County of San Diego a timely opportunity to provide for that basic level of funding for the county free library system that will encourage literacy and education and reduce crime within the County of San Diego, it is necessary that this act take effect immediately.

CHAPTER 825

An act to add Article 1.5 (commencing with Section 129048) to Chapter 1 of Part 6 of Division 107 of the Health and Safety Code, relating to health.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Article 1.5 (commencing with Section 129048) is added to Chapter 1 of Part 6 of Division 107 of the Health and Safety Code, to read:

Article 1.5. Hospital Construction Assistance

129048. The Legislature finds and declares all of the following:

(a) The State of California has a compelling interest in ensuring that adequate health facilities that are able to withstand seismic events are available to care for patients, especially in the event of a disaster.

(b) Hospitals are required, under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1 (commencing with

Section 129675) of Part 7), to improve, or remove from acute care service, buildings that pose a significant safety risk of collapse and danger to the public by January 1, 2008.

(c) Hospitals are also required by that act to repair, rebuild, or remove from service, buildings that may not be repairable or functional following strong ground motion, by January 1, 2030.

(d) California hospitals should be enabled to participate in programs that provide financial assistance for hospital construction and retrofitting.

(e) The United States Department of Housing and Urban Development operates a HUD 242 loan insurance program, through which hospitals can access facility mortgage insurance and lower interest rates.

(f) As a condition for participating in the HUD 242 program, a hospital must have a state-commissioned or conducted feasibility study of a hospital construction project.

129049. (a) The office may, at the request of a hospital, commission an independent study of market need and feasibility, as required by the United States Department of Housing and Urban Development, as part of an application for mortgage insurance for hospitals pursuant to Section 1715z-7 of Title 12 of the United States Code, or any other federal mortgage insurance program for health-related facilities.

(b) The cost of the feasibility study permitted pursuant to subdivision (a) shall be paid for by the office from reimbursements received from the applicant.

(c) Notwithstanding any other provision of law, the office may directly retain independent feasibility consultants and require a deposit from the applicant for the entire cost of the services at the time they are requested.

(d) The office shall charge applicants a fee for the reasonable costs of administering this article.

(e) The program provided for in this article shall be administered in conformance with the requirements of the United States Department of Housing and Urban Development for feasibility studies authorized by this section and the applicable requirements of state law pertaining to contracts.

CHAPTER 826

An act to amend and repeal Section 11265.1 of, to add Section 18910 to, and to repeal, add, and repeal Section 11265.2 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 11265.1 of the Welfare and Institutions Code is amended to read:

11265.1. (a) Except as provided in Section 11265.5, in addition to the requirement for the annual redetermination of eligibility, the department shall establish regulations consistent with federal law to implement a recipient monthly reporting system for use in determining monthly eligibility and the amount of the grant. The department shall define what constitutes a complete report and shall specify the deadlines for submitting a complete report, as well as the consequences of, and good cause for, failure to submit a complete report. The department shall adopt fair and equitable regulations implementing the monthly reporting requirement.

(b) This section shall become inoperative on the date that the director executes a declaration stating that Section 11265.2, as added by the act adding this subdivision, is fully implemented statewide, and shall be repealed on January 1 of the year following the year in which it becomes inoperative.

SEC. 2. Section 11265.2 of the Welfare and Institutions Code is repealed.

SEC. 3. Section 11265.2 is added to the Welfare and Institutions Code, to read:

11265.2. (a) (1) Notwithstanding any other provision of law, commencing July 1, 2000, subject to the agreement of the local district attorney, Los Angeles County and up to eight counties selected by the department may implement this section.

(2) Subject to paragraph (3) and notwithstanding any other provision of law, all counties that have not implemented this section pursuant to paragraph (1) may begin implementation of this section on January 1, 2004, and shall complete implementation of this section no later than January 1, 2005. This paragraph shall become inoperative on January 1, 2004.

(3) Counties participating in the eligibility simplification project under Section 11265.6 may delay implementation of this section until the expiration of the eligibility simplification project if implementation of this section would be inconsistent with the federal approval of the eligibility simplification project.

(4) On or before January 1, 2003, the department shall evaluate the impact of this section in a sufficient number of participating counties to reliably describe this section's impact. The department shall collaborate with the Office of Criminal Justice Planning in conducting the program integrity aspects of this evaluation.

(b) Each county shall conduct an annual eligibility redetermination. A county shall be required to have a face-to-face interview with the recipient at the redetermination, unless the recipient has regular contact with the county through CalWORKs or other similar programs. Subsequent face-to-face interviews for any

recipient for purposes related to verification of eligibility or the provision of CalWORKs services may be conducted at the county's discretion.

(c) Each county shall redetermine the financial eligibility of each recipient on a quarterly basis.

(d) (1) A recipient shall report, in writing, to the county within 10 days any change in resources, his or her household's monthly income, including source of income, his or her address, or the composition of his or her household if the report would be required under the federal food stamp reporting requirement for nonmonthly reporting households. The county shall recalculate an assistance unit's grant level only upon the report of any required change, provided that the department obtains the appropriate waiver, as specified in subdivision (i). If the United States Department of Agriculture denies this waiver, counties shall recalculate an assistance unit's grant level based upon any reported changes.

(2) Each quarter the recipient shall complete a quarterly report which shall be signed under penalty of perjury. The report shall include all information necessary from the quarterly report month to determine financial eligibility.

(3) For each of the first two months covered by the quarterly report, the recipient shall state whether there was any income, and for each type of reportable change listed in paragraph (1), other than a change of address, whether such a change occurred, and if so, whether the change was reported in writing. If the recipient states that a reportable change occurred during the first two months covered by the quarterly report and was not reported in writing or the county has no record that a recipient made a written report, it shall require that the information that should have been reported pursuant to paragraph (1) be reported in writing and under penalty of perjury within 10 days of receiving notice from the county. A failure to provide the report required by this paragraph within the 10-day period shall result in a termination of benefits, after receiving notice from the county as required by state and federal law.

(4) (A) If the recipient fails to submit a quarterly report by the date prescribed by the department, the county shall provide the recipient with a notice, as required by the department, that the county will terminate benefits.

(B) Prior to terminating benefits, the county shall attempt to make personal contact to remind the recipient that a completed report is due, or, if contact is not made, shall send a reminder notice to the recipient.

(C) Any discontinuance notice shall be rescinded and aid shall be restored if the report is received by the first working day of the month for which aid is paid based on submission of the quarterly report.

(e) In recalculating the amount of a recipient's grant pursuant to this section, including the timing and provision of any supplementary payment, changes in the grant amount shall be made on a

prospective basis pursuant to food stamp regulations for nonmonthly reporting households.

(f) Counties shall provide a mechanism for recipients to retain written documentation of the contents of the report, pursuant to minimum standards established by the department.

(g) The department shall define what constitutes a complete report, and shall specify the deadlines for submitting a complete report, as well as the consequences of, and good cause for, failure to submit a complete report.

(h) In determining overpayments and underpayments, the county shall use the federal food stamp regulations that are used to determine overissuances and underissuances for nonmonthly reporting households.

(i) The department shall seek all necessary waivers from the United States Department of Agriculture to conform the Food Stamp Program requirements to the provisions of this section and to increase the income reporting amount for nonmonthly reporting households to one hundred dollars ($100).

(j) 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), until January 1, 2001, the department may implement a reporting and budgeting system, as described in this section, through an all county letter or similar instructions from the director.

(k) The department shall adopt regulations to implement this section no later than January 1, 2001. Emergency regulations adopted for implementation of the applicable provisions of this section may be adopted by the director in accordance with the Administrative Procedure Act. The initial adoption of emergency regulations and one readoption of these regulations shall be deemed to be an emergency and necessary for immediate preservation of the public peace, health and safety, or general welfare. Initial 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.

(*l*) 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, extends or deletes that date.

SEC. 4. Section 18910 is added to the Welfare and Institutions Code, to read:

18910. To the extent permitted by federal law, regulations, waivers, and directives, the department shall conform food stamp requirements to the requirements specified in Section 11265.2, except that subparagraph (B) of paragraph (4) of subdivision (d) of Section 11265.2 shall not apply to food stamp recipients who do not receive cash assistance under the CalWORKs program.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

CHAPTER 827

An act to amend Section 354.5 of the Code of Civil Procedure, and to add Chapter 4 (commencing with Section 13800) to Division 3 of the Insurance Code, relating to insurance claims of Holocaust victims, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 354.5 of the Code of Civil Procedure is amended to read:

354.5. (a) The following definitions govern the construction of this section:

(1) "Holocaust victim" means any person who was persecuted during the period of 1929 to 1945, inclusive, by Nazi Germany, its allies, or sympathizers.

(2) "Related company" means any parent, subsidiary, reinsurer, successor in interest, managing general agent, or affiliate company of the insurer.

(3) "Insurer" means an insurance provider doing business in the state, or whose contacts in the state satisfy the constitutional requirements for jurisdiction, that sold life, property, liability, health, annuities, dowry, educational, casualty, or any other insurance covering persons or property to persons in Europe at any time before 1945, directly or through a related company, whether the sale of the insurance occurred before or after the insurer and the related company became related.

(b) Notwithstanding any other provision of law, any Holocaust victim, or heir or beneficiary of a Holocaust victim, who resides in this state and has a claim arising out of an insurance policy or policies purchased or in effect in Europe before 1945 from an insurer described in paragraph (3) of subdivision (a), may bring a legal action to recover on that claim in any superior court of the state for the county in which the plaintiff or one of the plaintiffs resides, which court shall be vested with jurisdiction over that action until its completion or resolution.

(c) Any action brought by a Holocaust victim or the heir or beneficiary of a Holocaust victim, whether a resident or nonresident of this state, seeking proceeds of the insurance policies issued or in effect before 1945 shall not be dismissed for failure to comply with the applicable statute of limitation, provided the action is commenced on or before December 31, 2010.

SEC. 2. Chapter 4 (commencing with Section 13800) is added to Division 3 of the Insurance Code, to read:

CHAPTER 4. HOLOCAUST ERA INSURANCE REGISTRY

13800. This chapter shall be known and may be cited as the Holocaust Victim Insurance Relief Act of 1999.

13801. The Legislature finds and declares the following:

(a) During World War II, untold millions of lives and property were destroyed.

(b) In addition to the many atrocities that befell the victims of the Nazi regime, insurance claims that rightfully should have been paid out to the victims and their families, in many cases, were not.

(c) In many instances, insurance company records are the only proof of insurance policies held. In some cases, recollection of those policies' very existence may have perished along with the Holocaust victims.

(d) At least 5,600 documented Holocaust survivors are living in California today. Many of these survivors and their descendents have been fighting for over 50 years to persuade insurance companies to settle unpaid or wrongfully paid claims. Survivors are asking that insurance companies come forth with any information they possess that could show proof of insurance policies held by Holocaust victims and survivors, in order to ensure that closure on this issue is swiftly brought to pass.

(e) Insurance companies doing business in the State of California have a responsibility to ensure that any involvement they or their related companies may have had with insurance policies of Holocaust victims are disclosed to the state and to ensure the rapid resolution of these questions, eliminating the further victimization of these policyholders and their families.

(f) The international Jewish community is in active negotiations with responsible insurance companies through the International Commission on Holocaust Era Insurance Claims to resolve all outstanding insurance claims issues. This chapter is necessary to protect the claims and interests of California residents, as well as to encourage the development of a resolution to these issues through the international process or through direct action by the State of California, as necessary.

13802. For purposes of this chapter, the following definitions shall apply:

(a) "Holocaust victim" means any person who was persecuted during the period of 1929 to 1945, inclusive, by Nazi Germany, its allies, or sympathizers.

(b) "Related company" means any parent, subsidiary, reinsurer, successor in interest, managing general agent, or affiliate company of the insurer.

(c) "Proceeds" means the face value or other payout value of insurance policies and annuities plus reasonable interest to date of payment without diminution for wartime or immediate postwar currency devaluation.

13803. The commissioner shall establish and maintain within the department a central registry containing records and information relating to insurance policies, as described in Section 13804, of Holocaust victims, living and deceased. The registry shall be known as the Holocaust Era Insurance Registry. The Attorney General, in coordination with the department, shall establish appropriate mechanisms to ensure public access to the registry.

13804. (a) Any insurer currently doing business in the state that sold life, property, liability, health, annuities, dowry, educational, or casualty insurance policies, directly or through a related company, to persons in Europe, which were in effect between 1920 and 1945, whether the sale occurred before or after the insurer and the related company became related, shall, within 180 days following enactment of this act, file or cause to be filed the following information with the commissioner to be entered into the registry:

(1) The number of those insurance policies.

(2) The holder, beneficiary, and current status of those policies.

(3) The city of origin, domicile, or address for each policyholder listed in the policies.

(b) In addition, each insurer subject to subdivision (a) shall certify to any of the following:

(1) That the proceeds of the policies described in subdivision (a) have been paid to the designated beneficiaries or their heirs where that person or persons, after diligent search, could be located and identified.

(2) That the proceeds of the policies where the beneficiaries or heirs could not, after diligent search, be located or identified, have been distributed to Holocaust survivors or to qualified charitable nonprofit organizations for the purpose of assisting Holocaust survivors.

(3) That a court of law has certified in a legal proceeding resolving the rights of unpaid policyholders, their heirs, and beneficiaries, a plan for the distribution of the proceeds.

(4) That the proceeds have not been distributed and the amount of those proceeds.

An insurer who certifies as true any material matter pursuant to this subdivision, which the insurer knows to be false, is guilty of a misdemeanor.

(c) An insurer currently doing business in the state that did not sell any insurance policies in Europe prior to 1945, shall not be subject to this section if a related company, whether or not authorized and currently doing business in the state, has made a filing under this section.

13805. Any insurer that knowingly files information about a policy required by this chapter that is false shall, with respect to that policy, be liable for a civil penalty not to exceed five thousand dollars ($5,000), which penalty is hereby appropriated to the department to be used by it to aid in the resolution of Holocaust insurance claims.

13806. The commissioner shall suspend the certificate of authority to conduct insurance business in the state of any insurer that fails to comply with the requirements of this chapter by the 210th day after this section becomes effective, until the time that the insurer complies with this chapter.

13807. The commissioner shall adopt rules to implement this chapter within 90 days of its effective date. The rules shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the rules 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.

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 to establish the Holocaust Era Insurance Registry and to ensure the resolution of claims under insurance policies held by Holocaust victims and survivors at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 828

An act to amend Section 47605 of, and to add Section 47611.5 to, to add an article heading (commencing with Section 47620) to Chapter 5 of, and to add Article 2 (commencing with Section 47626) to

Chapter 5 of, Part 26.8 of, the Education Code, and to amend Section 3540.1 of the Government Code, relating to charter schools.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 47605 of the Education Code is amended to read:

47605. (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

(2) In the case of a petition for the establishment of a charter school through the conversion of an existing public school, that would not be eligible for a loan pursuant to subdivision (b) of Section 41365, the petition may be circulated by any one or more persons seeking to establish the converted charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by

an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one, or more, of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the school.

(F) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(G) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general

population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(H) Admission requirements, if applicable.

(I) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 4 of Title 1 of the Government Code.

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall on a regular basis consult with their parents and teachers regarding the school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for

existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the State Board of Education.

(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to either the county board of education or directly to the State Board of Education. The county board of education or the State Board of Education, as the case may be, shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education.

(2) A charter school for which a charter is granted by either the county board of education or the State Board of Education pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(3) If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district to deny a petition shall, thereafter, be subject to judicial review.

(4) The State Board of Education shall adopt regulations implementing this subdivision.

(5) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition to the State Board of Education.

(k) (1) The State Board of Education may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local education agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the State Board of Education.

(3) A charter school that has been granted its charter by the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the school's petition for renewal, the school may petition the State Board of Education for renewal of its charter.

(*l*) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

SEC. 2. Section 47611.5 is added to the Education Code, to read:

47611.5. (a) Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code shall apply to charter schools.

(b) A charter school charter shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer of the employees at the charter school for the purposes of Section 3540.1 of the Government Code. If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of the Government Code.

(c) If the charter of a charter school does not specify that it shall comply with those statutes and regulations governing public school employers that establish and regulate tenure or a merit or civil service system, the scope of representation for that charter school shall also include discipline and dismissal of charter school employees.

(d) The Public Employment Relations Board shall take into account the Charter Schools Act of 1992 (Part 26.8 (commencing with Section 47600)) when deciding cases brought before it related to charter schools.

(e) The approval or a denial of a charter petition by a granting agency pursuant subdivision (b) of Section 47605 shall not be controlled by collective bargaining agreements nor subject to review or regulation by the Public Employment Relations Board.

(f) By March 31, 2000, all existing charter schools must declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter.

SEC. 3. An article heading is added to Chapter 5 (commencing with Section 47620) of Part 26.8, to read:

Article 1. University of California at Los Angeles Elementary Charter School

SEC. 4. Article 2 (commencing with Section 47626) is added to Chapter 5 of Part 26.8 of the Education Code, to read:

Article 2. Employer

47626. (a) Notwithstanding Section 47611.5, a charter school operated by the University of California in facilities owned by the Regents of the University of California shall declare in its charter that it is the employer of the employees at the charter school for the purposes of Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code. The provisions of Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code shall apply to the charter school. A charter school operated by the University of California in facilities owned by the Regents of the University of California may not be deemed a public school employer for the purposes of this chapter.

(b) By March 31, 2000, an existing charter school operated by the University of California shall amend its charter to comply with this section.

SEC. 5. Section 3540.1 of the Government Code is amended to read:

3540.1. As used in this chapter:

(a) "Board" means the Public Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization which has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

(d) "Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

(g) "Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) "Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

(*l*) "Recognized organization" or "recognized employee organization" means an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

SEC. 5.5. Section 3540.1 of the Government Code is amended to read:

3540.1. As used in this chapter:

(a) "Board" means the Public Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization that has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

(d) "Employee organization" means any organization that includes employees of a public school employer and that has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person that organization authorizes to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

(g) "Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, that arrangement shall not deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) "Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, or a county superintendent of schools, a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code, or a joint

powers agency, except a joint powers agency established to provide services pursuant to Sections 990.4 and 990.8, provided that all of the following apply to the joint powers agency:

(1) It is created as an agency or entity that is separate from the parties to the joint powers agreement pursuant to Section 6503.5.

(2) It has its own employees separate from employees of the parties to the joint powers agreement.

(3) Any of the following are true:

(A) It provides services primarily performed by a school district, county board of education, or county superintendent of schools.

(B) A school district, county board of education, or county superintendent of schools is designated in the joint powers agreement pursuant to Section 6509.

(C) It is comprised solely of school agencies.

(*l*) "Recognized organization" or "recognized employee organization" means an employee organization that has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend that action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

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.

SEC. 7. Section 5.5 of this bill incorporates amendments to Section 3540.1 of the Government Code proposed by both this bill and AB 91. 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 3540.1 of the Government Code, and (3) this bill is enacted after AB 91, in which case Section 5 of this bill shall not become operative.

CHAPTER 829

An act to add Article 4 (commencing with Section 9800) to Chapter 2 of Part 1 of Division 3 of the Unemployment Insurance Code, relating to job training.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 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 California YouthBuild Act.

SEC. 2. Article 4 (commencing with Section 9800) is added to Chapter 2 of Part 1 of Division 3 of the Unemployment Insurance Code, to read:

Article 4. California YouthBuild Program

9800. The purposes of the California YouthBuild Program shall be all of the following:

(a) To enable economically disadvantaged youth, especially youth who have not finished high school, to obtain the education, job skills training, personal counseling, leadership development skills training, job placement assistance, and long-term followup services necessary for them to achieve permanent economic self-sufficiency, while at the same time providing valuable community service that addresses urgent community needs, including the demand for affordable housing and the need for young role models and mentors for younger teenagers and children.

(b) To provide communities with the opportunity to establish or rebuild neighborhood stability in economically depressed and low-income areas, as well as historic areas requiring restoration or preservation, while providing economically disadvantaged youth, and youth who have not finished high school, an opportunity for a meaningful participation in society.

(c) To allow communities to expand the supply of affordable housing for homeless and other low-income individuals by utilizing the energies and talents of economically disadvantaged youth and young people who have not graduated from school.

(d) To foster the development of leadership skills and a commitment to community development among youth.

9801. (a) The director, from funds appropriated for this purpose to the YouthBuild Program, may make grants to applicants for the purpose of carrying out programs as authorized by this article. For the purpose of administering and managing the grant-making process, the director may contract with a qualified nonprofit corporation designated by the United States Department of Housing

and Urban Development to provide technical assistance to YouthBuild programs. All programs shall have strong youth and community involvement.

(b) For purposes of this article, the following terms have the following meaning:

(1) "YouthBuild Program" means the overall California YouthBuild Program, as coordinated by the director.

(2) "Program" means an individual program funded by a grant made by the director to an applicant as part of the overall YouthBuild Program.

(c) "Applicant" means an entity that applies for a program grant pursuant to Section 9807.

(d) "Participant" means a person eligible to participate in a program pursuant to Section 9805.

9802. Programs shall provide, at a minimum, all of the following services:

(a) (1) Acquisition, rehabilitation, acquisition and rehabilitation, or construction of housing and related facilities to be used for the purpose of providing homeownership for disadvantaged persons, residential housing for homeless individuals and very low income families, or transitional housing for persons who are homeless, ill, deinstitutionalized, or who have disabilities or special needs.

(2) Rehabilitation or construction of community facilities owned by public agencies or nonprofit entities.

(b) (1) Integrated education and job training services and activities or an equally-divided basis, with 50 percent of participants' time spent in classroom-based instruction, counseling, and leadership development instruction, and 50 percent of participants' time spent in experiential training on the construction site.

(2) The education component described in paragraph (1) shall include basic skills instruction, secondary education services, and other activities designed to lead to the attainment of a high school diploma or its equivalent. The curriculum for this component shall include math, language arts, vocational education, life skills training, social studies related to the cultural and community history of the participants, leadership skills, and other topics at the discretion of the program. Bilingual services shall be available for individuals with limited-English proficiency. A program shall have a goal of a minimum teacher-to-participant ratio of one teacher for every 18 participants.

(3) The job training component described in paragraph (1) shall involve work experience and skills training apprenticeships related to construction and rehabilitation activities described in subdivision (a). The process of construction shall be coupled with skills training and with close onsite supervision by experienced trainers. The curriculum for this component shall contain a set of locally agreed upon skills and competencies that are systematically taught, with participants' mastery assessed individually on a regular, ongoing

basis. Safety skills shall be taught at the outset. A program shall have a goal of a minimum trainer-to-participant ratio of one trainer for every seven participants. This component shall be coordinated to the maximum extent feasible with preapprenticeship and apprenticeship opportunities.

(4) Assistance in attaining postsecondary education and in obtaining financial aid shall be made available to participants prior to graduation from the program.

(c) Counseling services designed to assist participants in positively participating in society, including all of the following, as necessary: outreach, assessment, and orientation; individual and peer counseling; life skills training, drug and alcohol abuse education and prevention; and referral to appropriate drug rehabilitation, medical, mental health, legal, housing, and other community services and resources. A program shall have a goal of a minimum counselor-to-participant ratio of one counselor for every 28 participants.

(d) (1) Leadership development training that provides participants with meaningful opportunities to develop leadership skills, including decisionmaking, problemsolving, and negotiating. A program shall encourage participants to develop strong peer group ties that support their mutual pursuit of skills and values.

(2) Each program shall establish a youth council in which participants are afforded opportunities to develop public speaking and negotiating skills, and management and policymaking participation in specific aspects of the program.

(e) Each participant shall be provided with a training subsidy, living allowance, or stipend of not less than eight dollars ($8) per hour for the time spent at the worksite in construction training. For those participants who receive public assistance, this training subsidy, living allowance, or stipend shall not affect housing benefits, medical benefits, child care benefits, or food stamp benefits, to the extent consistent with federal law. The training subsidy, living allowance, or stipend may be distributed in a manner that offers incentives for good performance.

(f) Full-time participation in a program shall be offered for a period of not less than six months and not more than 24 months.

(g) A concentrated effort shall be made to find construction, construction-related, or nonconstruction jobs for all graduates of the program who have performed well. The job training curriculum shall provide participants with basic preparation for seeking and maintaining a job. Followup counseling and assistance in job seeking shall also be provided to participants for a period of 12 months following graduation from the program.

(h) A program serving 20 or more participants is required to have a full-time director responsible for the coordination of the requirements of this article.

9802.5. The department may accept proposals for funding from applicants who establish their eligibility for funding under this article by submitting proof that they have been funded or designated as a federal YouthBuild program by the United States Department of Housing and Urban Development.

9803. Program grants may be used for the activities in Section 9802 and for any of the following activities:

(a) Legal fees for housing acquisition.

(b) Administrative and technical assistance costs of the program applicant that may not exceed 15 percent of the program grant, or another amount as is determined by the director to be necessary to support capacity development of a private nonprofit community-based organization. The applicant may contract with a technical assistance provider approved by the director.

(c) Defraying costs for the ongoing training and technical assistance needs of the program applicant that are related to developing and carrying out the program.

9805. (a) Except as provided in subdivision (b), eligible participants in a program shall be youth between the ages of 17 and 24, inclusive, who are economically disadvantaged, as defined in Section 1503 of Title 29 of the United States Code, and who are in one of the following groups:

(1) Persons who are not attending any school and who have not received a secondary school diploma or its equivalent.

(2) Persons currently enrolled in a traditional or alternative school setting or a GED program and who are in danger of dropping out of school.

(3) Very low income persons whose incomes are at or less than 50 percent of the area median income area, adjusted for family size, as estimated by the United States Department of Housing and Urban Development.

(b) Not more than 25 percent of program participants may be individuals who do not meet the requirements of subdivision (a). These participants shall be persons who have educational needs despite the attainment of a high school diploma.

9806. (a) The director shall use the existing infrastructure of federally funded YouthBuild programs to the maximum extent possible. In the 1999–2000 fiscal year, the director shall give first priority in awarding grants under this article to applicants seeking to continue YouthBuild programs established with federal or other funding.

(b) Entities eligible for grants under this article shall be nonprofit private entities and public agencies with experience in operating youth construction skills training, education, job placement, personal development, leadership development, and housing rehabilitation or construction programs.

9807. An application for a grant under this article shall, at a minimum, contain all of the following:

(a) The amount of the grant requested and the proposed use of the grant.

(b) A description of the applicant and a statement of the applicant's qualifications, including a description of the applicant's past experience in running a YouthBuild program, if applicable, a description of the applicant's past experience with housing rehabilitation or construction, youth and youth education, youth leadership development, and youth employment training programs, and a description of the applicant's relationship with apprenticeship programs and with community-based organizations.

(c) A description of the proposed construction site and evidence of site control, and a description of the proposed construction or rehabilitation activities to be undertaken and the anticipated schedule for carrying out those activities.

(d) A description of the educational and job training activities, work opportunities, and other services that will be provided to participants.

(e) A description of the manner in which eligible youths will be recruited and selected, including a description of the arrangements that will be made with community-based organizations, local education agencies and education agencies of Native American nations, public assistance agencies, courts of jurisdiction for status and youth offenders, shelters for homeless individuals and other agencies serving homeless youth, foster care agencies, and other appropriate public agencies and private entities.

(f) A description of the special efforts that will be undertaken to recruit eligible young women as participants, including women with dependent children, including a description of how those women can receive appropriate support, including child care.

(g) A description of how the proposed program will be coordinated with other federal, state, Native American nation, and local agency activities, including public school programs, the Americorps program, crime prevention programs, vocational, adult, and bilingual education programs, and other job training programs.

(h) Substantive assurances that there will be a sufficient number of adequately trained supervisory personnel in the program who have attained the journey level or its equivalent.

(i) A description of the applicant's relationship with any local building trades union, including a description of the union's involvement in training and the proposed relationship of the activities to be undertaken pursuant to the grant with established apprenticeship programs.

(j) A description of activities that will be undertaken to develop the leadership skills of participants, including their role in decisionmaking.

(k) A detailed budget and description of a system of fiscal controls and auditing and accountability procedures that will be used to ensure fiscal soundness.

(*l*) A description of any contracts and arrangements entered into between the applicant and other entities, including all in-kind donations and grants from both public and private sources that will augment grant funds made available pursuant to this article.

(m) Identification and description of the financing proposed for any acquisition of property, or the rehabilitation or construction of housing.

(n) Identification and description of the entity that will operate and manage the property.

(o) A certification that the applicant will comply with the requirements of applicable federal laws, including the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and that the applicant will work to further fair housing policies.

(p) A description of the qualifications and past experience of the person who will be the full-time director for the applicant's project to be funded pursuant to this article.

(q) A description of the applicant pool profile, including, but not limited to, the number of participants currently on parole or probation, the number of participants with children requiring paid supervision, and the number of participants with Department of Motor Vehicles or court-sanctioned holds on their drivers' licenses.

9808. The term "YouthBuild" shall only be used in connection with a program funded pursuant to this article or by the United States Department of Housing and Urban Development, or if the program is an affiliate of YouthBuild U.S.A.

9809. Each grant recipient, at the beginning of the grant cycle, shall report to the director, at a minimum, regarding the number of participants who have done any of the following:

(a) Obtained a general education degree (GED).

(b) Obtained full-time, unsubsidized employment in the building trades industry.

(c) Obtained full-time, unsubsidized employment in other industries.

(d) Obtained part-time, unsubsidized employment in the building trades industry or in other industries.

(e) Gained acceptance into a trade apprenticeship program.

(f) Successfully enrolled in a vocational or two-year community college.

(g) Successfully enrolled in a state university, the University of California, or any other four-year college.

9809.5. Each grant recipient shall report to the director on other participant outcomes as required by the Governor under Section 122(h) of the federal Workforce Investment Act of 1998.

SEC. 3. This act shall become operative only when funds are specifically appropriated for the purposes of this act by a state budget act.

CHAPTER 830

An act to amend Section 51872 of, and to add Sections 51870, 51871.3, 51871.4, and 51871.5 to, the Education Code, relating to education technology.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. It is the intent of the Legislature to establish a Commission on Technology in Learning to provide policy recommendations to the State Board of Education in areas related to technology planning, dissemination, and evaluation, which would carefully consider input from state, regional, and local interests. The Legislature finds and declares that a Commission on Technology in Learning would provide an appropriate venue for public input and dialogue in the decisionmaking process.

SEC. 2. Section 51870 is added to the Education Code, to read:

51870. For the purposes of this article, the following terms have the following meanings, unless the context otherwise requires:

(a) "Commission" means the Commission on Technology in Learning established by Section 51871.3.

(b) "Technology" means technology-based materials, equipment, systems, and networks.

SEC. 3. Section 51871.3 is added to the Education Code, to read:

51871.3. The Commission on Technology in Learning is hereby established to make policy recommendations to the State Board of Education in areas including, but not necessarily limited to, all of the following:

(a) Statewide planning for technology, including a statewide master plan for use of education technology in California's elementary and secondary instructional program which, at a minimum, includes all of the following:

(1) A process for annually updating the plan according to changing educational needs and emerging technological developments.

(2) The use of multiple technologies.

(3) The coordination of technology programs with other appropriate state education programs including programs for blind and disabled pupils.

(4) The integration of technology to assure alignment with state and federal education initiatives where appropriate.

(5) The active involvement of business and industry.

(6) A comprehensive evaluation process that is aligned with the state's overall educational program evaluation system.

(7) Provisions for working with the California Technology Assistance Project and other agencies, as appropriate, to implement policies of the State Board of Education and programs of the State Department of Education to aid in the use of technology in the delivery of instruction.

(8) Strategies for seeking and leveraging public and private funding.

(9) Consideration of the role of education technology to supplement California's learning improvement objectives.

(10) An evaluation of the distribution of existing technology resources and recommendations on ensuring access for all pupils.

(11) Comprehensive discussion of the effectiveness of using technology as a learning tool and the appropriate uses of technology in the delivery of instruction.

(12) It is the intent of the Legislature that the statewide master plan for use of education technology be incorporated into any future comprehensive kindergarten and grades 1 to 12, inclusive, statewide education master plan.

(b) Dissemination of technology resources, including all of the following:

(1) The development, identification, and access to information about programs, products, and practices that meet established technical criteria and state adopted content standards.

(2) The development of guidelines for the regional and statewide dissemination of information and services through the California Technology Assistance Project.

(c) The development of guidelines to aid in the ongoing comprehensive statewide evaluation of technology, telecommunications, and distance learning programs that directly and indirectly affect California education in kindergarten and grades 1 to 12, inclusive.

SEC. 4. Section 51871.4 is added to the Education Code, to read:

51871.4. (a) The Commission on Technology in Learning shall consist of 14 members who shall be appointed as follows:

(1) The Superintendent of Public Instruction shall appoint two representatives in accordance with the following:

(A) One of the representatives shall be from a county office of education.

(B) One of the representatives shall be a public member from an organization representing California school boards.

(2) The Governor shall appoint one practicing public school administrator from an organization representing California administrators, one business representative with experience in

applications of technology, one practicing public school elementary teacher from an organization representing California teachers, one library media specialist from an association representing library media specialists, one public member with expertise in the application of technology, and one practicing public school secondary teacher from an organization representing technology-using educators. The Governor, in consultation with the President of the University of California, the Chancellor of the California State University, and the Chancellor of the California Community Colleges, shall appoint two additional members representing public postsecondary institutions.

(3) The Senate Committee on Rules shall appoint one business representative with experience in applications of technology and one practicing public school administrator with expertise in technology infrastructure.

(4) The Speaker of the Assembly shall appoint one business representative with experience in applications of technology and one practicing public school elementary teacher from an organization representing California teachers.

(5) The President of the State Board of Education shall appoint a nonvoting liaison to the Commission on Technology in Learning. The Curriculum Development and Supplemental Materials Commission shall appoint a nonvoting liaison to the Commission on Technology in Learning. The Executive Director of the California Postsecondary Education Commission shall appoint a nonvoting liaison to the Commission on Technology in Learning.

(b) No private business entity shall have more than one of its officers or employees serving as a member of the commission. In making the appointments, the Governor, the President pro Tempore of the Senate, and the Speaker of the Assembly shall consult and cooperate so that not more than one representative of any single private business entity is serving on the commission at any time.

(c) Members shall be knowledgeable about applications of technology in an educational setting and shall be selected based on documentation of that experience.

(d) It is the intent of the Legislature that the members of the commission broadly represent the unique perspectives of all of the stakeholders in a collaborative process.

(e) Members shall serve without compensation, except that members shall be reimbursed for necessary reasonable expenses incurred for attending meetings of the commission.

(f) It is the intent of the Legislature that the members will be subject to the conflict-of-interest provisions of the Political Reform Act of 1974, as set forth in Title 9 (commencing with Section 81000) of the Government Code.

(g) Meetings of the Commission on Technology in Learning shall be open to the public and shall be conducted in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with

Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 5. Section 51871.5 is added to the Education Code, to read:

51871.5. (a) It is the intent of the Legislature that education technology planning be accomplished in the most comprehensive manner possible. To that end, the current practice of developing education technology plans for each funding program should be replaced with a comprehensive local planning process that will enable school districts to apply for grants on an ongoing basis and assist in utilizing available education technology program.

(b) By October 1, 2000, the commission, in conjunction with the Curriculum Development and Supplemental Materials Commission, shall recommend guidelines and criteria to the State Board of Education for assisting school districts in the preparation of three- to five-year technology plans for the integration of technology into the school curriculum. At a minimum, the technology plans shall be integrated, where allowed by law, with School Improvement Plans and Title I Plans and include a staff development and technical support component.

(c) On or after January 1, 2002, a school district shall have a technology plan as a precondition of receiving any technology grant administered by the State Department of Education. This requirement may be waived by the State Board of Education if it is determined that the applicant school district made a good faith effort to develop a local technology plan, but for reasons beyond its control, the district cannot develop the plan before receipt of the technology grant.

(d) The State Department of Education shall maintain a record of school districts that have three- to five-year education technology plans and shall make that information available to any interested public agencies.

SEC. 6. Section 51872 of the Education Code is amended to read:

51872. (a) The State Department of Education shall administer this article. The duties of the State Department of Education shall include, but are not necessarily limited to, the following:

(1) Assisting the State Board of Education on education technology plans, policies, programs, and activities.

(2) Providing support staff to the Commission on Technology in Learning to make recommendations to the State Board of Education.

(3) Providing for the statewide coordination, planning, and evaluation of education technology programs and resources.

(4) Advancing the use of technology in the curriculum and in the administration of elementary and secondary schools.

(b) Funding to support the activities described in subdivision (a), including educational technology services which are more efficiently and effectively delivered at a statewide level, shall be provided to the State Department of Education through the annual Budget Act. Based upon recommendations from the California Technology

Assistance Project and other interested parties, the State Board of Education shall fund school districts and county offices of education to provide centralized statewide educational technology services that address locally defined needs but that are more efficiently and effectively provided on a statewide basis.

SEC. 7. Notwithstanding any other provision of law, the Commission on Technology in Learning established pursuant to Section 51871.3 of the Education Code shall terminate and shall have no further duties on January 1, 2003, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 8. It is the intent of the Legislature that the Commission on Technology in Learning established pursuant to Section 51871.3 of the Education Code commence meeting on or after April 2, 2000, unless the commission is authorized by the Governor's Y-2000 Executive Committee to meet before that date.

CHAPTER 831

An act to amend Section 14132.47 of the Welfare and Institutions Code, and to amend Section 111 of Chapter 310 of the Statutes of 1998, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 14132.47 of the Welfare and Institutions Code is amended to read:

14132.47. (a) It is the intent of the Legislature to provide local governmental agencies the choice of participating in either or both of the Targeted Case Management (TCM) and Administrative Claiming process programs at their option, subject to the requirements of this section and Section 14132.44.

(b) The department may contract with each participating local governmental agency or each local educational consortium to assist with the performance of administrative activities necessary for the proper and efficient administration of the Medi-Cal program, pursuant to Section 1396b(a) of Title 42 of the United States Code, Section 1903a of the federal Social Security Act, and this activity shall be known as the Administrative Claiming process.

(c) (1) As a condition for participation in the Administrative Claiming process, each participating local governmental agency or each local educational consortium shall, for the purpose of claiming federal medicaid matching funds, enter into a contract with the department and shall certify to the department the amount of local

governmental agency or each local educational consortium general funds or any other funds allowed under federal law and regulation expended on the allowable administrative activities.

(2) The department shall deny the claim if it determines that the certification is not adequately supported for purposes of federal financial participation.

(d) Each participating local governmental agency or local educational consortium may subcontract with nongovernmental entities to assist with the performance of administrative activities necessary for the proper and efficient administration of the Medi-Cal program under the conditions specified by the department in regulations.

(e) Each Administrative Claiming process contract shall include a requirement that each participating local governmental agency or each local educational consortium submit a claiming plan in a manner that shall be prescribed by the department in regulations, developed in consultation with local governmental agencies.

(f) The department shall require that each participating local governmental agency or each local educational consortium certify to the department both of the following:

(1) The availability and expenditure of 100 percent of the nonfederal share of the cost of performing Administrative Claiming process activities. The funds expended for this purpose shall be from the local governmental agency's general fund or the general funds of local educational agencies or from any other funds allowed under federal law and regulation.

(2) In each fiscal year that its expenditures represent costs that are eligible for federal financial participation for that fiscal year. The department shall deny the claim if it determines that the certification is not adequately supported for purposes of federal financial participation.

(g) (1) Notwithstanding any other provision of this section, the state shall be held harmless, in accordance with paragraphs (2) and (3), from any federal audit disallowance and interest resulting from payments made to a participating local governmental agency or local educational consortium pursuant to this section, less the amounts already remitted to the state pursuant to subdivision (m) for the disallowed claim.

(2) To the extent that a federal audit disallowance and interest results from a claim or claims for which any participating local governmental agency or local educational consortium has received reimbursement for Administrative Claiming process activities, the department shall recoup from the local governmental agency or local educational consortium that submitted the disallowed claim, through offsets or by a direct billing, amounts equal to the amount of the disallowance and interest, in that fiscal year, less the amounts already remitted to the state pursuant to subdivision (m) for the disallowed claim. All subsequent claims submitted to the department applicable

to any previously disallowed administrative activity or claim, may be held in abeyance, with no payment made, until the federal disallowance issue is resolved.

(3) Notwithstanding paragraph (2), to the extent that a federal audit disallowance and interest results from a claim or claims for which the participating local governmental agency or local educational consortium has received reimbursement for Administrative Claiming process activities performed by a nongovernmental entity under contract with, and on behalf of, the participating local governmental agency or local educational consortium, the department shall be held harmless by that particular participating local governmental agency or local educational consortium for 100 percent of the amount of the federal audit disallowance and interest, less the amounts already remitted to the state pursuant to subdivision (m) for the disallowed claim.

(h) The use of local matching funds required by this section shall not create, lead to, or expand the health care funding obligations or service obligations for current or future years for any participating local governmental agency or local educational consortium, except as required by this section or as may be required by federal law.

(i) The department shall deny any claim from a participating local governmental agency or local educational consortium if the department determines that the claim is not adequately supported in accordance with criteria established pursuant to this subdivision and implementing regulations before it forwards the claim for reimbursement to the federal medicaid program. In consultation with local government agencies and local educational consortia, the department shall adopt regulations that prescribe the requirements for the submission and payment of claims for administrative activities performed by each participating local governmental agency and local educational consortium.

(j) Administrative activities shall be those determined by the department to be necessary for the proper and efficient administration of the state's medicaid plan and shall be defined in regulation.

(k) If the department denies any claim submitted under this section, the affected participating local governmental agency or local educational consortium may, within 30 days after receipt of written notice of the denial, request that the department reconsider its action. The participating local governmental agency or local educational consortium may request a meeting with the director or his or her designee within 30 days to present its concerns to the department after the request is filed. If the director or his or her designee cannot meet, the department shall respond in writing indicating the specific reasons for which the claim is out of compliance to the participating local governmental agency or local educational consortium in response to its appeal. Thereafter, the decision of the director shall be final.

(*l*) Participating local governmental agencies or local educational consortium may claim the actual costs of nonemergency, nonmedical transportation of Medi-Cal eligibles to Medi-Cal covered services, under guidelines established by the department, to the extent that these costs are actually borne by the participating local governmental agency or local educational consortium. A local educational consortium may only claim for nonemergency, nonmedical transportation of Medi-Cal eligibles for Medi-Cal covered services, through the Medi-Cal administrative activities program. Medi-Cal medical transportation services shall be claimed under the local educational agency Medi-Cal billing option, pursuant to Section 14132.06.

(m) (1) Each participating local governmental agency shall contribute to the department a portion of the agency's general fund that has been made available due to the coverage of administrative activities described in this section under the Medi-Cal program. The contributed funds shall be reinvested in health services through the Medi-Cal program. The total contribution amount shall be equal to $33^1/_3$ percent of amounts made available under this section, but in no case shall the contribution exceed twenty million dollars ($20,000,000) a fiscal year less the amount contributed pursuant to subdivision (m) of Section 14132.44. Beginning with the 1994–95 fiscal year, each local governmental agency's share of the total contribution shall be determined by claims submitted and approved for payment through January 1 of the following calendar year. Claims received and approved for payment after January 1 for dates of service in the previous fiscal year shall be included in the following year's calculation. Each local governmental agency's share of the contribution for the previous fiscal year shall be determined no later than February 15 and shall be remitted to the state no later than April 1 of each year. The contribution amount shall be paid from nonfederal, general fund revenues and shall be deposited in the Administrative Claiming Fund for transfer to the Health Care Deposit Fund.

(2) Moneys received by the department pursuant to this subdivision are hereby continuously appropriated to the department for support of the Medi-Cal program, and the funds shall be administered in accordance with procedures prescribed by the Department of Finance. If not paid as provided in this section, the department may offset payments due to each participating local governmental agency from the state, not related to payments required to be made pursuant to this section in order to recoup these funds for the Administrative Claiming Fund.

(3) This subdivision shall only apply to claims approved for the 1994–95 to 1997–98 fiscal years, inclusive.

(n) As a condition of participation in the Administrative Claiming process and in recognition of revenue generated to each participating local governmental agency and each local educational

consortium in the Administrative Claiming process, each participating local governmental agency and each local educational consortium shall pay an annual participation fee through a mechanism agreed to by the state and local governmental agencies and local educational consortia, or, if no agreement is reached by August 1 of each year, directly to the state. The participation fee shall be used to cover the cost of administering the Administrative Claiming process, including, but not limited to, claims processing, technical assistance, and monitoring. The department shall determine and report staffing requirements upon which projected costs will be based. The amount of the participation fee shall be based upon the anticipated salaries, benefits, and operating expenses, to administer the Administrative Claiming process and other costs related to that process.

(o) For the purposes of this section "participating local governmental agency" means a county or chartered city under contract with the department pursuant to subdivision (b).

(p) For purposes of this section, "local educational agency" means a local educational agency, as defined in subdivision (h) of Section 14132.06, that participates under the Administrative Claiming process as a subcontractor to the local educational consortium in its service region.

(q) (1) For purposes of this section, "local educational consortium" means a local agency that is one of the service regions of the California County Superintendent Educational Services Association.

(2) Each local educational consortium shall contract with the department pursuant to paragraph (1) of subdivision (c).

(r) (1) Each participating local educational consortium shall be responsible for the local educational agencies in its service region that participate in the Administrative Claiming process. This responsibility includes, but is not limited to, the preparation and submission of all administrative claiming plans, training of local educational agency staff, overseeing the local educational agency time survey process, and the submission of detailed quarterly invoices on behalf of any participating local educational agency.

(2) Each participating local educational consortium shall ensure local educational agency compliance with all requirements of the Administrative Claiming process established for local governmental agencies.

(3) Ninety days prior to the initial participation in the Administrative Claiming process, each local educational consortium shall notify the department of its intent to participate in the process, and shall identify each local educational agency that will be participating as its subcontractor.

(s) (1) Each local educational agency that elects to participate in the Administrative Claiming process shall submit claims through its

local educational consortium or through the local governmental agency, but not both.

(2) Each local educational agency participating as a subcontractor to a local educational consortium shall comply with all requirements of the Administrative Claiming process established for local governmental agencies.

(t) For the purposes of this section, a "nongovernmental entity" does not include an entity or person administered by, affiliated with, or employed by a participating local governmental agency or a local educational consortium.

(u) The requirements of subdivision (m) shall not apply to claims for administrative activities, pursuant to the Administrative Claiming process, performed by public health programs administered by the state.

(v) A participating local governmental agency or a local educational consortium may charge an administrative fee to any entity claiming Administrative Claiming through that agency.

(w) The department shall continue to administer the Administrative Claiming process in conformity with federal requirements.

(x) The department shall provide technical assistance to all participating local governmental agencies and local educational consortia in order to maximize federal financial participation in the Administrative Claiming process.

(y) This section shall be applicable to Administrative Claiming process activities performed, and to moneys paid to participating local governmental agencies for those activities in the 1994–95 fiscal year and thereafter, and to local educational consortia in the 1998–99 fiscal year and thereafter.

SEC. 2. Section 111 of Chapter 310 of the Statutes of 1998 is amended to read:

Sec. 111. (a) The sum of two million six hundred thousand dollars ($2,600,000) is hereby appropriated from the Proposition 98 Reversion Account to a consortium of county offices of education, on a one-time basis, for three-year grants, beginning with the 1998–99 fiscal year, for the purpose of supporting technical assistance and focussed group training to teach school district personnel how to maximize reimbursements of federal funds for Medi-Cal services and case management.

(b) (1) There is hereby created, for purposes of this section, a technical advisory committee, which shall be composed of one representative from each of the 11 school superintendent regions, representatives from appropriate state departments and agencies, representatives from various school health and social services organizations, four members representing large school districts, four members representing medium school districts, four members representing small school districts, and representatives from various parent and community services organizations.

(2) Expenses for the technical advisory committee created pursuant to paragraph (1) shall not exceed forty-five thousand dollars ($45,000) per year of the funds appropriated by this section.

(c) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) of Section 41202 of the Education Code, for the 1997–98 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XVIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1997–98 fiscal year.

SEC. 3. The sum of fourteen million nine hundred forty-one thousand dollars ($14,941,000) is hereby appropriated from the Unallocated Account in the Cigarette and Tobacco Products Surtax Fund, to the State Department of Health Services, for the purpose of funding the Breast Cancer Early Detection Program, in augmentation of Item 4260-111-0236 of the Budget Act of 1999 (Ch. 50, Stats. 1999).

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 needed funding for the early detection of breast cancer in the most expedient manner, it is necessary that this act take effect immediately.

CHAPTER 832

An act to amend Section 38139 of, and to add Section 49068.6 to the Education Code, relating to school safety.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 38139 of the Education Code is amended to read:

38139. (a) Public primary schools shall post at an appropriate area restricted to adults information regarding missing children provided by the Department of Justice pursuant to Section 14208 of the Penal Code.

(b) Public secondary schools shall post at an appropriate area information regarding missing children provided by the Department of Justice pursuant to Section 14208 of the Penal Code.

SEC. 2. Section 49068.6 is added to the Education Code, to read:

49068.6. (a) Any law enforcement agency responsible for the investigation of a missing child shall inform the school district, other local educational agency, or private school, in which the child is enrolled, that the child is missing. The notice shall be in writing, shall include a photograph of the child if a photograph is available, and shall be given within 10 days of the child's disappearance.

(b) Every school notified pursuant to this section shall place a notice that the child has been reported missing on the front of each missing child's school record. For public schools this shall be in addition to the posting requirements set forth in Section 38139.

(c) Local law enforcement agencies may establish a process for informing local schools about abducted children pursuant to this section.

(d) If a school receives a record inquiry or request from any person or entity for a missing child about whom the school has been notified pursuant to this section, the school shall immediately notify the law enforcement authorities who informed the school of the missing child's status.

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 833

An act to amend Sections 47000, 47001, 47003, 47004, 47011, 47013, 47020, and 47026 of, to add Sections 47004.1 and 47021 to, to repeal Sections 47014 and 47020 of, and to repeal and add Section 47002 of, the Food and Agricultural Code, and to amend Section 113745 of the Health and Safety Code, relating to agriculture.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 47000 of the Food and Agricultural Code is amended to read:

47000. The Legislature finds and declares all of the following with regard to the direct marketing of agricultural products:

(a) Direct marketing of agricultural products benefits the agricultural community and the consumer by, among other things, providing an alternative method for growers to sell their products

while benefiting the consumer by supplying quality produce at reasonable prices.

(b) Direct marketing is a good public relations tool for the agricultural industry that brings the farmer face-to-face with consumers.

(c) The marketing potential of a wide variety of California-produced agricultural products should be maximized.

(d) The department should maintain a direct marketing program and the industry should continue to encourage the sale of California-grown fresh produce.

(e) A regulatory scheme should be developed that provides the flexibility that will make direct marketing a viable marketing system.

(f) The department should assist producers in organizing certified farmers' markets and other forms of direct marketing by providing technical advice on marketing methods and in complying with the regulations that affect direct marketing programs.

(g) The department is encouraged to establish an ad hoc advisory committee to assist the department in establishing regulations affecting direct marketing of products and to advise the secretary in all matters pertaining to direct marketing.

SEC. 1.5. Section 47001 of the Food and Agricultural Code is amended to read:

47001. (a) The secretary may adopt regulations to encourage the direct sale by farmers to consumers of all types of California agricultural products.

(b) These regulations may include provisions to ensure and maintain quality and wholesomeness of the products.

SEC. 2. Section 47002 of the Food and Agricultural Code is repealed.

SEC. 3. Section 47002 is added to the Food and Agricultural Code, to read:

47002. California farmers may transport for sale and sell California-grown fresh fruits, nuts, and vegetables that they produce, directly to the public, which produce shall be exempt from size, standard pack, container, and labeling requirements, at a certified farmers' market or at a retail stand located at or near the point of production, subject to the following conditions:

(a) All fresh fruits, nuts, and vegetables sold shall comply with the California Code of Regulations governing maturity and quality.

(b) No exemption granted by this section supersedes the provisions of federal marketing orders, state marketing orders, or any health and safety laws, regulations, or ordinances.

(c) All fresh fruits, nuts, and vegetables sold in closed consumer containers shall be labeled with the name, address, and ZIP Code of the producer, and a declaration of identity and net quantity of the commodity in the package.

SEC. 4. Section 47003 of the Food and Agricultural Code is amended to read:

47003. The secretary may establish qualifications for persons selling products directly to consumers whenever the sales involve the use of any exemption granted by this chapter. Certified farmers' markets and producers' sales outlets, at or near the location of production, may likewise be subject to qualifications.

SEC. 5. Section 47004 of the Food and Agricultural Code is amended to read:

47004. (a) Certified farmers' markets may establish rules and procedures that are more restrictive or do not violate state law or regulation governing or implementing this chapter.

(b) Certified farmers' markets are locations established in accordance with local ordinances, where California farmers may transport and sell to the public California agricultural products that they produced, that are exempt from the established grade, size, labeling, packaging and other such requirements for fruits, nuts, and vegetables, and operated in accordance with this chapter and regulations adopted pursuant to this chapter.

(c) The governing body of any certified farmers' market operating with more than one participating certified producer shall adopt written rules and procedures pertaining to the operation of the market. The rules shall include a requirement that the governing body and its designated agents establish, implement, and enforce all rules and procedures pertaining to the operation of the certified farmers' market in a fair, nondiscriminatory, and equitable manner.

SEC. 6. Section 47004.1 is added to the Food and Agricultural Code, to read:

47004.1. (a) Any certified producer aggrieved by a rule or procedure of a certified farmers' market may submit a written request to the department for an advisory opinion as to whether, as a question of law, the rule or procedure in dispute is consistent with this chapter and the regulations implementing this chapter. Not later than 15 calendar days after the date on which the written request is received, the department shall undertake its review and issue an advisory opinion. The request for and issuance of an advisory opinion is not a prerequisite to the pursuit of any civil litigation. However, the advisory opinion shall be given substantial weight in any subsequent civil or administrative proceeding involving the parties and subject matter of the advisory opinion. The department may adopt regulations providing for the precedent value of its advisory opinions issued pursuant to this section. Notwithstanding any other provision of law, the department shall not incur liability in connection with the preparation and issuance of any advisory opinion issued pursuant to this section.

(b) The department shall provide for an informal hearing pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, with regard to any grievance of a certified producer involving questions of fact concerning any action taken by a certified farmers'

market against the producer, or any implementation of a rule or procedure established by certified farmers' market against the producer, or any other related issue, as to whether application of the rule or procedure in dispute is consistent with this chapter and the regulations implementing this chapter. The informal hearing shall proceed without the option of conversion to a formal hearing. The request for an informal hearing to resolve issues involving disputes of fact is not a prerequisite to the pursuit of any civil litigation.

(c) In addition to, or in lieu of, the alternatives set forth in subdivisions (a) and (b), the parties may agree to employ mediation. If mediation fails to resolve the dispute, the parties may agree to employ binding arbitration. The department and the county agricultural commissioners shall incur no expense or liability for mediation or binding arbitration.

SEC. 7. Section 47011 of the Food and Agricultural Code is amended to read:

47011. The committee shall be advisory to the secretary on all matters pertaining to direct marketing of agricultural products at certified farmers' markets and may make recommendations including, but not limited to, the following:

(a) The amendment, repeal, or adoption of legislation and regulations that relate to the administration and enforcement of this chapter.

(b) Administrative policies and procedures that relate to the inspection of certified producers and certified farmers' markets.

(c) Administrative civil penalties for violations of direct marketing regulations.

(d) Certification fees collected pursuant to Section 47020.

(e) Statewide review of enforcement actions.

(f) The annual budget of the department to carry out this chapter and the assessment of fees to pay for the costs incurred by the department to carry out this chapter.

(g) Alternative strategies for certification and investigation methodology, and methods for industry self-regulation and commission formation.

SEC. 8. Section 47013 of the Food and Agricultural Code is amended to read:

47013. The members of the committee and any alternate shall serve without compensation, but may be reimbursed by the department for travel expenses incurred in the performance of their duties.

SEC. 9. Section 47014 of the Food and Agricultural Code is repealed.

SEC. 10. Section 47020 of the Food and Agricultural Code, as added by Section 1.5 of Chapter 606 of the Statutes of 1996, effective until January 1, 2000, is amended to read.

47020. (a) A certified farmers' market certificate issued by a county agricultural commissioner shall be valid for 12 months from

the date of issue. The county agricultural commissioner shall inspect every certified farmers' market within his or her jurisdiction at least once, in every six months of operation. The county agricultural commissioner may charge a certification and inspection fee up to a maximum rate of sixty dollars ($60) per hour, unless the county board of supervisors elects not to charge inspection and certificate costs. Inspections shall be required notwithstanding a county board of supervisors' election not to charge certificate and inspection fees. If a fee is charged for conducting the certification and inspection, it shall include either the itemized actual costs, or the weighted average hourly rate, as determined on an annual basis by the county, which shall be provided to the certified farmers' market manager prior to the payment of the fee.

(b) A certified producer's certificate issued by a county agricultural commissioner may be valid for up to 12 months from the date of issue. The county agricultural commissioner in each county shall perform at least one annual onsite inspection of the property or properties listed on every certified producer's certificate issued in their county to verify production of the commodities listed on the certificate or the existence in storage of the harvested production, or both. If the certificate is issued for a period of seven months or more, the county agricultural commissioner in each county shall perform at least one additional onsite inspection or other equally appropriate measure to verify production or storage, or both. The county agricultural commissioner may charge a certificate and inspection fee up to a maximum rate of sixty dollars ($60) per hour, unless the county board of supervisors elects not to charge inspection and certificate costs. Inspections shall be required notwithstanding a county board of supervisors' election not to charge certificate and inspection fees. If a fee is charged for conducting the certification and inspection, it shall include either the itemized actual costs, or the weighted average hourly rate, as determined on an annual basis by the county, which shall be provided to the producer prior to the payment of the fee.

(c) Renewal of a certified farmers' market certificate or certified producer's certificate may be denied by either the department or a county agricultural commissioner if a certified farmers' market or a certified producer is delinquent in the payment of the required state fee or any county certification and inspection fee or administrative civil penalty authorized under this chapter. The certificate shall be eligible for renewal when all outstanding balances and associated penalties or administrative fines have been paid to the department or the respective county or counties.

SEC. 11. Section 47020 of the Food and Agricultural Code, as added by Chapter 606 of the Statutes of 1996, operative January 1, 2000, is repealed.

SEC. 12. Section 47021 is added to the Food and Agricultural Code, to read:

47021. (a) Commencing January 1, 2000, every operator of a certified farmers' market shall remit to the department, within 30 days after the end of each quarter, a fee equal to the number of certified producer certificates and other agricultural producers participating on each market day for the entire previous quarter. The fee shall be established by January 1 of each year by the department upon the receipt of a budget recommendation from the advisory committee. The fee shall not exceed sixty cents ($0.60) for each certified producer certificate and other agricultural producers participating on each market day. A certified farmers' market may directly recover all or part of the fee from the participating certified and other agricultural producers.

(b) Any operator of a certified farmers' market who fails to pay the required fee within 30 days after the end of the quarter in which it is due, shall pay to the department a monthly interest charge on the unpaid balance, to be determined by the department and not to exceed the maximum amount permitted by law.

(c) All fees collected pursuant to this section shall be deposited in the Department of Food and Agriculture Fund. The money generated by the imposition of the fees shall be used, upon appropriation by the Legislature, by the department, to carry out this chapter, including all of the following actions undertaken by the department:

(1) The coordination of the advisory committee.

(2) The evaluation of county enforcement actions and assistance with regard to multiple county enforcement problems.

(3) The adoption of regulations to carry out this chapter.

(4) Hearing appeals from actions taken by county agricultural commissioners to enforce this chapter.

(5) The review of rules or procedures established by a certified farmers' market and the issuance of advisory opinions and the provision of informal hearings pursuant to Section 47004.1 as to whether the rules or procedures are consistent with this chapter and implementing regulations.

(6) The maintenance of a current statewide listing of certified farmers' markets with schedules of operations and locations.

(7) The maintenance of a current statewide listing of certified producers.

(8) The dissemination to all certified farmers' markets information regarding the suspension or revocation of any producer's certificate and the imposition of administrative penalties.

(9) Other actions, including the maintenance of special fund reserves, that are recommended by the advisory committee and approved by the department for the purpose of carrying out this chapter.

(d) 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. 13. Section 47026 of the Food and Agricultural Code is amended to read:

47026. 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.

SEC. 14. Section 113745 of the Health and Safety Code is amended to read:

113745. "Certified farmers' market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code, and the regulations adopted pursuant thereto.

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 834

An act to add Section 21023.5 to the Government Code, relating to retirement.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 21023.5 is added to the Government Code, to read:

21023.5. (a) "Public service" for purposes of this article also means time served, not to exceed three years, as a volunteer in the Peace Corps or AmeriCorps: Volunteers In Service To America.

(b) This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency elects to be subject to this section by contract or by amendment to its contract made in the manner prescribed for approval of contracts.

(c) Any member electing to receive credit for service under this section shall pay all reasonable administrative costs and contributions, sufficient to cover the total employer and employee cost plus interest, at rates to be determined by the board. This section applies to past and future service in the Peace Corps or AmeriCorps: Volunteers In Service To America.

CHAPTER 835

An act to amend Section 1513 of the Code of Civil Procedure, relating to escheat.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1513 of the Code of Civil Procedure is amended to read:

1513. Subject to Sections 1510 and 1511, the following property held or owing by a business association escheats to this state:

(a) Except as provided in subdivision (f), any demand, savings, or matured time deposit, or account subject to a negotiable order of withdrawal, made with a banking organization, together with any interest or dividends thereon, excluding, from demand deposits and accounts subject to a negotiable order of withdrawal only, any reasonable service charges that may lawfully be withheld and that do not (where made in this state) exceed those set forth in schedules filed by the banking organization from time to time with the Controller, when the owner, for more than three years, has not done any of the following:

(1) Increased or decreased the amount of the deposit, cashed an interest check, or presented the passbook or other similar evidence of the deposit for the crediting of interest.

(2) Corresponded electronically or in writing with the banking organization concerning the deposit.

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum or other record on file with the banking organization.

A deposit or account shall not, however, escheat to the state if, during the previous three years, the owner has owned another deposit or account with the banking organization and, with respect to that deposit or account, the owner has done any of the acts described in paragraph (1), (2), or (3), and the banking organization has communicated electronically or in writing with the owner, at the address to which communications regarding that deposit or account are regularly sent, with regard to the deposit or account that would otherwise escheat under this subdivision. For purposes of this subdivision, "communications" means account statements or statements of interest paid for federal and state income tax purposes.

No banking organization may discontinue any interest or dividends on any savings deposit because of the inactivity contemplated by this section.

(b) Except as provided in subdivision (f), any demand, savings, or matured time deposit, or matured investment certificate, or account

subject to a negotiable order of withdrawal, or other interest in a financial organization or any deposit made therewith, and any interest or dividends thereon, excluding, from demand deposits and accounts subject to a negotiable order of withdrawal only, any reasonable service charges that may lawfully be withheld and that do not (where made in this state) exceed those set forth in schedules filed by the financial organization from time to time with the Controller, when the owner, for more than three years, has not done any of the following:

(1) Increased or decreased the amount of the funds or deposit, cashed an interest check, or presented an appropriate record for the crediting of interest or dividends.

(2) Corresponded electronically or in writing with the financial organization concerning the funds or deposit.

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum or other record on file with the financial organization.

A deposit or account shall not, however, escheat to the state if, during the previous three years, the owner has owned another deposit or account with the financial organization and, with respect to that deposit or account, the owner has done any of the acts described in paragraph (1), (2), or (3), and the financial organization has communicated electronically or in writing with the owner, at the address to which communications regarding that deposit or account are regularly sent, with regard to the deposit or account that would otherwise escheat under this subdivision. For purposes of this subdivision, "communications" means account statements or statements of interest paid for federal and state income tax purposes.

No financial organization may discontinue any interest or dividends on any funds paid toward purchase of shares or other interest, or on any deposit, because of the inactivity contemplated by this section.

(c) Any sum payable on a traveler's check issued by a business association that has been outstanding for more than 15 years from the date of its issuance, when the owner, for more than 15 years, has not corresponded in writing with the business association concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association.

(d) Any sum payable on any other written instrument on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, any draft or certified check, that has been outstanding for more than five years from the date it was payable, or from the date of its issuance if payable on demand, when the owner, for more than five years, has not corresponded electronically or in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization.

(e) Any sum payable on a money order issued by a business association (including a banking or financial organization), that has been outstanding for more than seven years from the date it was payable, or from the date of its issuance if payable on demand, excluding any reasonable service charges that may lawfully be withheld and that do not, when made in this state, exceed those set forth in schedules filed by the business association from time to time with the Controller, when the owner, for more than seven years, has not corresponded electronically or in writing with the business association, banking, or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the business association. For the purposes of this subdivision, "reasonable service charge" means a service charge that meets all of the following requirements:

(1) It is uniformly applied to all of the issuer's money orders.

(2) It is clearly disclosed to the purchaser at the time of purchase and to the recipient of the money order.

(3) It does not begin to accrue until three years after the purchase date, and it stops accruing after the value of the money order escheats.

(4) It is permitted by contract between the issuer and the purchaser.

(5) It does not exceed 25 cents ($0.25) per month or the aggregate amount of twenty-one dollars ($21).

(f) Any funds held by a business association in an individual retirement account or under a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States or of this state, when the owner, for more than three years after the funds become payable or distributable, has not done any of the following:

(1) Increased or decreased the principal.

(2) Accepted payment of principal or income.

(3) Corresponded electronically or in writing concerning the property or otherwise indicated an interest.

These funds are not payable or distributable within the meaning of this subdivision unless, under the terms of the account or plan, distribution of all or a part of the funds would then be mandatory.

(g) For purposes of this section "service charges" means service charges imposed because of the inactivity contemplated by this section.

CHAPTER 836

An act to amend Sections 1785.31 and 1785.35 of the Civil Code, relating to consumer credit.

[Approved by Governor October 8, 1999. Filed with
Secretary of State October 10, 1999.]

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

SECTION 1. Section 1785.31 of the Civil Code is amended to read:

1785.31. (a) Any consumer who suffers damages as a result of a violation of this title by any person may bring an action in a court of appropriate jurisdiction against that person to recover the following:

(1) In the case of a negligent violation, actual damages, including court costs, loss of wages, attorney's fees and, when applicable, pain and suffering.

(2) In the case of a willful violation:

(A) Actual damages as set forth in paragraph (1) above:

(B) Punitive damages of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) for each violation as the court deems proper;

(C) Any other relief that the court deems proper.

(3) In the case of liability of a natural person for obtaining a consumer credit report under false pretenses or knowingly without a permissible purpose, an award of actual damages pursuant to paragraph (1) or subparagraph (A) of paragraph (2) shall be in an amount of not less than two thousand five hundred dollars ($2,500).

(b) Injunctive relief shall be available to any consumer aggrieved by a violation or a threatened violation of this title whether or not the consumer seeks any other remedy under this section.

(c) Notwithstanding any other provision of this section, any person who willfully violates any requirement imposed under this title may be liable for punitive damages in the case of a class action, in an amount that the court may allow. In determining the amount of award in any class action, the court shall consider among relevant factors the amount of any actual damages awarded, the frequency of the violations, the resources of the violator and the number of persons adversely affected.

(d) Except as provided in subdivision (e), the prevailing plaintiffs in any action commenced under this section shall be entitled to recover court costs and reasonable attorney's fees.

(e) If a plaintiff brings an action pursuant to this section against a debt collector, as defined in subdivision (c) of Section 1788.2, and the basis for the action is related to the collection of a debt, whether issues relating to the debt collection are raised in the same or another proceeding, the debt collector shall be entitled to recover reasonable attorney's fees upon a finding by the court that the action was not brought in good faith.

(f) If a plaintiff only seeks and obtains injunctive relief to compel compliance with this title, court costs and attorney's fees shall be awarded pursuant to Section 1021.5 of the Code of Civil Procedure.

(g) Nothing in this section is intended to affect remedies available under Section 128.5 of the Code of Civil Procedure.

SEC. 2. Section 1785.35 of the Civil Code is amended to read:

1785.35. This title does not apply to any consumer credit report that by its terms is limited to disclosures from public records relating to land and land titles and does not apply to any person whose records and files are maintained for the primary purpose of reporting those portions of the public records that impart constructive notice under the law of matters relating to land and land titles.

CHAPTER 837

An act to amend Section 17215 of the Education Code, relating to schoolsites.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 17215 of the Education Code is amended to read:

17215. (a) In order to promote the safety of pupils, comprehensive community planning, and greater educational usefulness of schoolsites before acquiring title to property for a new schoolsite, the governing board of each school district, including any district governed by a city board of education, shall give the State Department of Education written notice of the proposed acquisition and shall submit any information required by the State Department of Education if the proposed site is within two miles, measured by air line, of that point on an airport runway or a potential runway included in an airport master plan that is nearest to the site.

(b) Upon receipt of the notice required pursuant to subdivision (a), the State Department of Education shall notify the Department of Transportation in writing of the proposed acquisition. If the Department of Transportation is no longer in operation, the State Department of Education shall, in lieu of notifying the Department of Transportation, notify the United States Department of Transportation or any other appropriate agency, in writing, of the proposed acquisition for the purpose of obtaining from the department or other agency any information or assistance that it may desire to give.

(c) The Department of Transportation shall investigate the proposed site and, within 30 working days after receipt of the notice, shall submit to the State Department of Education a written report of its findings including recommendations concerning acquisition of the site. As part of the investigation, the Department of

Transportation shall give notice thereof to the owner and operator of the airport who shall be granted the opportunity to comment upon the proposed schoolsite. The Department of Transportation shall adopt regulations setting forth the criteria by which a proposed site will be evaluated pursuant to this section.

(d) The State Department of Education shall, within 10 days of receiving the Department of Transportation's report, forward the report to the governing board of the school district. The governing board may not acquire title to the property until the report of the Department of Transportation has been received. If the report does not favor the acquisition of the property for a schoolsite or an addition to a present schoolsite, the governing board may not acquire title to the property. If the report does favor the acquisition of the property for a schoolsite or an addition to a present schoolsite, the governing board shall hold a public hearing on the matter prior to acquiring the site.

(e) If the Department of Transportation's recommendation does not favor acquisition of a proposed site, state funds or local funds may not be apportioned or expended for the acquisition of that site, construction of any school building on that site, or for the expansion of any existing site to include that site.

(f) This section does not apply to sites acquired prior to January 1, 1966, nor to any additions or extensions to those sites.

CHAPTER 838

An act to add Sections 1209, 1279, 1280, 1281, and 1302 to, the Education Code, relating to pupils.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1209 is added to the Education Code, to read:

1209. A county superintendent of schools shall not increase his or her salary, financial remuneration, benefits, or pension in any manner or for any reason without bringing the matter to the attention of county board of education for its discussion at a regularly scheduled public meeting of the board and without the approval of the county board of education.

SEC. 2. Section 1279 is added to the Education Code, to read:

1279. (a) The county superintendent of schools shall not in any manner dispose of any item of personal property worth over twenty-five thousand dollars ($25,000) that belongs to the county office of education without meeting the following conditions:

(1) Obtaining an independent valuation of the property.

(2) Advertising the property for sale in a newspaper of general circulation within the district, or, if there is no newspaper of general circulation within the district, in any newspaper of general circulation that is regularly circulated in the district. The advertisement shall be published for a period of time in accordance with the policy of the county board of education.

(3) Bringing the matter to the attention of the county board of education for its discussion at a regularly scheduled public meeting.

(4) Obtaining the approval of the county board of education.

(b) The county superintendent of schools shall not in any manner dispose of any personal property worth less than twenty-five thousand dollars ($25,000) that belongs to the county office of education unless he or she certifies the value of the property in a quarterly report and submits that report to the county board of education for its review.

SEC. 3. Section 1280 is added to the Education Code, to read:

1280. If a revision in excess of twenty-five thousand dollars ($25,000) is proposed by the county superintendent of schools to the annual budget of the county superintendent of schools after the county board of education has adopted the budget, the revision shall be incorporated in the next interim financial report or other board report when the report is submitted to the county board of education for discussion and approval at a regularly scheduled public meeting of the county board of education.

SEC. 4. Section 1281 is added to the Education Code, to read:

1281. (a) No county superintendent of schools may hire as a consultant any entity in which he or she has a financial interest.

(b) If the county superintendent of schools enters into a consultant contract for twenty-five thousand dollars ($25,000) or more and the contract constitutes a budget revision, it shall be incorporated in the next interim financial report or other board report when the report is submitted to the county board of education for discussion and approval at a regularly scheduled public meeting of the county board of education.

SEC. 5. Section 1302 is added to the Education Code, to read:

1302. (a) The county superintendent of schools shall not increase by ten thousand dollars ($10,000) or more the salary or bonus of any employee of the county office of education unless the matter is brought to the attention of the county board of education for its discussion at a regularly scheduled public meeting of the county board of education.

(b) The county superintendent of schools shall not increase the retirement benefits of any employee of the county office of education unless the matter is brought to the attention of the county board of education for its discussion at a regularly scheduled public meeting of the county board of education and the county board of education approves the increase.

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 839

An act to amend Section 79.1 of the Military and Veterans Code, relating to veterans.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 79.1 of the Military and Veterans Code is amended to read:

79.1. In addition to the Undersecretary of Veterans Affairs, there shall be within the department, and the secretary shall appoint, a Deputy Secretary of Women Veterans Affairs who shall have responsibility over administration of women veterans affairs.

CHAPTER 840

An act to amend Section 830.3 of, and to add and repeal Section 830.29 of, the Penal Code, relating to peace officers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 830.29 is added to the Penal Code, to read:

830.29. (a) Pursuant to Section 830.3, the Director of Consumer Affairs may designate as peace officers an additional seven persons, who shall at the time of their designation be assigned to the investigations unit of the Dental Board of California.

(b) The authorization for these additional seven peace officer positions shall become inoperative on July 1, 2002, unless a later

enacted statute that is enacted on or before January 1, 2003, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code. The Director of Consumer Affairs may designate as peace officers 10 persons who shall at the time of their designation be assigned to the investigations unit of the Dental Board of California.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 106500 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 106500 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs, the Department of Toxic Substances Control, the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be the enforcement of Section 550.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be the enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these

peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Science Center, as designated by the executive director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Employees of the Franchise Tax Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of the law as set forth in Chapter 9 (commencing with Section 19701) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(t) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers, and until those peace officers have been instructed in the employing agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

SEC. 3. The Dental Board of California shall contract with an outside entity to conduct an independent study to examine what the board's needs are for sworn peace officer positions in its investigations unit. The study shall be completed and submitted to the Legislature by January 1, 2001.

The study shall include, but not be limited to, all of the following:

(a) Recommendations on the staffing requirements for the board's enforcement program, including the number and type of enforcement positions, such as sworn peace officer positions and

non-peace officer positions, that the board needs to fulfill its consumer protection mandate.

(b) The extent to which the board needs to use sworn peace officers in its enforcement program.

(c) The documentation of trends in dental related crimes reported to the board.

(d) A comparison of the board's enforcement program to similar agencies, including the mix of enforcement staff, case loads, and case aging.

(e) Recommendations for improving the board's enforcement program.

(f) The fiscal impact to the board from recommended changes, if any, to its enforcement program and staff.

While conducting the study pursuant to this section, the outside entity shall consult with all interested parties, including, but not limited to, representatives of consumers, dental professionals, local law enforcement agencies, the Department of Consumer Affairs, and other state agencies that employ sworn peace officers and non-peace officer investigators.

SEC. 4. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the State Dentistry Fund to the Dental Board of California in order to conduct the study and prepare the report required by this act.

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 for the Board of Dental Examiners to retain its current employees and to avoid the transfer of any of these employees which is required no later than July 1, 1999, pursuant to Section 160.5 of the Business and Professions Code, it is necessary that this act take effect immediately.

CHAPTER 841

An act to amend Section 369b of, and to add Section 1463.12 to, the Penal Code, to add Section 1201.1 to the Public Utilities Code, and to amend Section 42001 of, and to add Sections 42001.16 and 42007.4 to, the Vehicle Code, relating to vehicles.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 369b of the Penal Code is amended to read:

369b. (a) This section shall only apply to counties with a population greater than 500,000.

(b) The court may order any person convicted of a rail transit related traffic violation, as listed in subdivision (c), to attend a traffic school which offers, as a part of its curriculum, a film developed or caused to be developed by a transportation commission or authority on rail transit safety.

(c) For a first offense, a court may, at its discretion, order any person cited for any of the following violations to attend a traffic school offering a rail transit safety film prepared by a county transportation commission or authority, pay an additional fine of one hundred dollars ($100), or both:

(1) Section 369g.

(2) Section 369i.

(3) Subdivision (c) of Section 21752 of the Vehicle Code, involving railroad grade crossings, or Section 22451 or 22452 of that code.

(d) For a second or subsequent violation as provided in subdivision (c), a court shall order a person to pay an additional fine of up to two hundred dollars ($200) and to attend a traffic school offering a rail safety film prepared by a county transportation commission or authority.

(e) All fines collected according to this section shall be distributed pursuant to Section 1463 of the Penal Code.

SEC. 2. Section 1463.12 is added to the Penal Code, to read:

1463.12. Notwithstanding Sections 1463 and 1464 of this code and Section 76000 of the Government Code, moneys that are collected for a violation of subdivision (c) of Section 21752 of the Vehicle Code, involving railroad grade crossings, or Section 22451 or 22452 of the Vehicle Code, and that are required to be deposited with the county treasurer pursuant to Section 1463 of this code shall be allocated as follows:

(a) If the offense occurred in an area where a transit district or transportation commission established under Division 12 (commencing with Section 130000) of the Public Utilities Code provides rail transportation, the first 30 percent of the amount collected shall be allocated to the general fund of that transit district or transportation commission to be used only for public safety and public education purposes relating to railroad grade crossings.

(b) If there is no transit district or transportation commission providing rail transportation in the area where the offense occurred, the first 30 percent of the amount collected shall be allocated to the general fund of the county in which the offense occurred, to be used only for public safety and public education purposes relating to railroad grade crossings.

(c) The balance of the amount collected shall be deposited by the county treasurer under Section 1463.

(d) A transit district, transportation commission, or a county that is allocated funds pursuant to subdivision (a) or (b) shall provide

public safety and public education relating to railroad grade crossings only to the extent that those purposes are funded by the allocations provided pursuant to subdivision (a) or (b).

SEC. 3. Section 1201.1 is added to the Public Utilities Code, to read:

1201.1. The commission, in consultation with the Department of Transportation, shall adopt rules and regulations prescribing uniform standards regarding the time after the warning signal begins at a railroad crossing at which traffic enforcement shall begin, after public hearings and consultation with transit districts or transportation commissions and multicounty rail transit entities established under Division 12 (commencing with Section 130000), that provide rail transportation.

SEC. 4. Section 42001 of the Vehicle Code is amended to read:

42001. (a) Except as provided in Section 42000.5, 42001.1, 42001.2, 42001.3, 42001.5, 42001.7, 42001.8, 42001.9, 42001.11, 42001.12, 42001.14, 42001.15, or Section 42001.16 or subdivision (b) or (c) of this section, or Article 2 (commencing with Section 42030), every person convicted of an infraction for a violation of this code or of any local ordinance adopted pursuant to this code shall be punished as follows:

(1) By a fine not exceeding one hundred dollars ($100).

(2) For a second infraction occurring within one year of a prior infraction which resulted in a conviction, a fine not exceeding two hundred dollars ($200).

(3) For a third or any subsequent infraction occurring within one year of two or more prior infractions which resulted in convictions, a fine not exceeding two hundred fifty dollars ($250).

(b) Every person convicted of a misdemeanor violation of Section 2800, 2801, or 2803, insofar as they affect failure to stop and submit to inspection of equipment or for an unsafe condition endangering any person, shall be punished as follows:

(1) By a fine not exceeding fifty dollars ($50) or imprisonment in the county jail not exceeding five days.

(2) For a second conviction within a period of one year, a fine not exceeding one hundred dollars ($100) or imprisonment in the county jail not exceeding 10 days, or both that fine and imprisonment.

(3) For a third or any subsequent conviction within a period of one year, a fine not exceeding five hundred dollars ($500) or imprisonment in the county jail not exceeding six months, or both that fine and imprisonment.

(c) A pedestrian convicted of an infraction for a violation of this code or any local ordinance adopted pursuant to this code shall be punished by a fine not exceeding fifty dollars ($50).

(d) Notwithstanding any other provision of law, any local public entity that employs peace officers, as designated under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, the California State University, and the University of California may, by ordinance or resolution, establish a schedule of fines applicable to

infractions committed by bicyclists within its jurisdiction. Any fine, including all penalty assessments and court costs, established pursuant to this subdivision shall not exceed the maximum fine, including penalty assessment and court costs, otherwise authorized by this code for that violation. If a bicycle fine schedule is adopted, it shall be used by the courts having jurisdiction over the area within which the ordinance or resolution is applicable instead of the fines, including penalty assessments and court costs, otherwise applicable under this code.

SEC. 5. Section 42001.16 is added to the Vehicle Code, to read:

42001.16. (a) Every person convicted of an infraction for a violation of subdivision (c) of Section 21752, involving railroad grade crossings, or Section 22451 or 22452 shall be punished as follows:

(1) For the first infraction, by a fine of one hundred dollars ($100).

(2) For a second infraction of any of the offenses described in this subdivision occurring within one year of a prior infraction that resulted in a conviction, by a fine not exceeding two hundred dollars ($200).

(3) For a third or any subsequent infraction of any of the offenses described in this subdivision occurring within one year of two or more prior infractions that resulted in convictions, by a fine not exceeding two hundred fifty dollars ($250).

(b) In addition to the fine imposed pursuant to subdivision (a), a court, in a county in which Section 369b of the Penal Code applies, may require the person to attend a traffic school as described in Section 369b of the Penal Code.

SEC. 6. Section 42007.4 is added to the Vehicle Code, to read:

42007.4. (a) Notwithstanding Section 42007, revenues derived from fees collected under Section 42007 from each person required or permitted to attend traffic violator school pursuant to Section 369b of the Penal Code as a result of a violation of subdivision (c) of Section 21752, involving railroad grade crossings, or Section 22451 or 22452 shall be allocated as follows:

(1) If the offense occurred in an area where a transit district or transportation commission established under Division 12 (commencing with Section 130000) of the Public Utilities Code provides rail transportation, the first 30 percent of the amount collected shall be allocated to the general fund of that transit district or transportation commission to be used only for public safety and public education purposes relating to railroad grade crossings.

(2) If there is no transit district or transportation commission providing rail transportation in the area where the offense occurred, the first 30 percent of the amount collected shall be allocated to the general fund of the county in which the offense occurred, to be used only for public safety and public education purposes relating to railroad grade crossings.

(3) The balance of the amount collected shall be deposited by the county treasurer under Section 1463 of the Penal Code.

(4) A transit district, transportation commission, or a county that is allocated funds pursuant to paragraph (1) or (2) shall provide public safety and public education relating to railroad grade crossings only to the extent that those purposes are funded by the allocations provided pursuant to paragraph (1) or (2).

(b) This section does not apply to the additional twenty-four dollars ($24) collected under subdivision (a) of Section 42007.1.

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 842

An act to amend Sections 15438 and 15439 of the Government Code, relating to health, and making an appropriation therefor.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 15438 of the Government Code is amended to read:

15438. Subject to the conditions, restrictions, and limitations of Section 15438.1, the authority may do any of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt an official seal.

(c) Sue and be sued in its own name.

(d) Receive and accept from any agency of the United States or any agency of the State of California or any municipality, county or other political subdivision thereof, or from any individual, association, or corporation gifts, grants, or donations of moneys for achieving any of the purposes of this chapter.

(e) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this part.

(f) Determine the location and character of any project to be financed under this part, and to acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, fund, finance, own, maintain, manage, repair, operate, lease as lessee or lessor and regulate the same, to enter into contracts for any or all of those

purposes, to enter into contracts for the management and operation of a project or other health facilities owned by the authority, and to designate a participating health institution as its agent to determine the location and character of a project undertaken by that participating health institution under this chapter and as the agent of the authority, to acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor and regulate the same, and as the agent of the authority, to enter into contracts for any or all of those purposes, including contracts for the management and operation of that project or other health facilities owned by the authority.

(g) Acquire, directly or by and through a participating health institution as its agent, by purchase solely from funds provided under the authority of this part, or by gift or devise, and to sell, by installment sale or otherwise, any lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and other interests in lands, including lands lying under water and riparian rights, which are located within the state the authority determines necessary or convenient for the acquisition, construction, or financing of a health facility or the acquisition, construction, financing, or operation of a project, upon the terms and at the prices considered by the authority to be reasonable and which can be agreed upon between the authority and the owner thereof, and to take title thereto in the name of the authority or in the name of a participating health institution as its agent.

(h) Receive and accept from any source loans, contributions, or grants for, or in aid of, the construction, financing, or refinancing of a project or any portion of a project in money, property, labor, or other things of value.

(i) Make secured or unsecured loans to, or purchase secured or unsecured loans of, any participating health institution in connection with the financing of a project or working capital in accordance with an agreement between the authority and the participating health institution. However, no loan to finance a project shall exceed the total cost of the project, as determined by the participating health institution and approved by the authority. Funds for secured loans may be provided from the California Health Facilities Financing Fund pursuant to subdivision (b) of Section 15439 to small or rural health facilities pursuant to authority guidelines.

(j) Make secured or unsecured loans to, or purchase secured or unsecured loans of, any participating health institution in accordance with an agreement between the authority and the participating health institution to refinance indebtedness incurred by that participating health institution in connection with projects undertaken or for health facilities acquired or for working capital financed prior to or after January 1, 1980. Funds for secured loans may be provided from the California Health Facilities Financing Fund

pursuant to subdivision (b) of Section 15439 to small or rural health facilities pursuant to authority guidelines.

(k) Mortgage all or any portion of interest of the authority in a project or other health facilities and the property on which that project or other health facilities are located, whether owned or thereafter acquired, including the granting of a security interest in any property, tangible or intangible, and to assign or pledge all or any portion of the interests of the authority in mortgages, deeds of trust, indentures of mortgage or trust or similar instruments, notes, and security interests in property, tangible or intangible, of participating health institutions to which the authority has made loans, and the revenues therefrom, including payments or income from any thereof owned or held by the authority, for the benefit of the holders of bonds issued to finance the project or health facilities or issued to refund or refinance outstanding indebtedness of participating health institutions as permitted by this part.

(*l*) Lease to a participating health institution the project being financed or other health facilities conveyed to the authority in connection with that financing, upon the terms and conditions the authority determines proper, and to charge and collect rents therefor and to terminate the lease upon the failure of the lessee to comply with any of the obligations of the lease; and to include in that lease, if desired, provisions granting the lessee options to renew the term of the lease for the period or periods and at the rent, as determined by the authority, to purchase any or all of the health facilities or that upon payment of all of the indebtedness incurred by the authority for the financing of that project or health facilities or for refunding outstanding indebtedness of a participating health institution, then the authority may convey any or all of the project or the other health facilities to the lessee or lessees thereof with or without consideration.

(m) Charge and equitably apportion among participating health institutions, the administrative costs and expenses incurred by the authority in the exercise of the powers and duties conferred by this part.

(n) Obtain, or aid in obtaining, from any department or agency of the United States or of the State of California or any private company, any insurance or guarantee as to, or of, or for the payment or repayment of, interest or principal, or both, or any part thereof, on any loan, lease, or obligation, or any instrument evidencing or securing the loan, lease, or obligation, made or entered into pursuant to this part; and notwithstanding any other provisions of this part, to enter into any agreement, contract, or any other instrument whatsoever with respect to that insurance or guarantee, to accept payment in the manner and form as provided therein in the event of default by a participating health institution, and to assign that insurance or guarantee as security for the authority's bonds.

(o) Enter into any and all agreements or contracts, including agreements for liquidity and credit enhancement, interest rate swaps

or hedges, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the authority or to carry out any power expressly granted by this part.

(p) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in any obligations authorized by the resolution authorizing the issuance of the bonds secured thereof or authorized by law for the investment of trust funds in the custody of the Treasurer.

(q) Establish and maintain a reciprocal insurance company or an insurance program that shall be treated and licensed as a reciprocal insurance company for regulatory purposes under the Insurance Code on behalf of one or more participating health institutions, to provide for payment of judgments, settlement of claims, expense, loss and damage that arises, or is claimed to have arisen, from any act or omission of, or attributable to, the participating health institution or any nonprofit organization controlled by, or controlling or under common control with, the participating health institution, their employees, agents or others for whom they may be held responsible, in connection with any liability insurance (including medical malpractice); set premiums, ascertain loss experience and expenses and determine credits, refunds, and assessments; and establish limits and terms of coverage; and engage any expert or consultant it deems necessary or appropriate to manage or otherwise assist with the insurance company or program; and pay any expenses in connection therewith; and contract with the participating health institution or institutions for insurance coverage from the insurance company or program and for the payment of any expenses in connection therewith including any bonds issued to fund or finance the insurance company or program.

(r) Provide funding for self-insurance for participating health institutions. However, there shall be no pooling of liability risk among participating health institutions except as provided in subdivision (f) of Section 15438.5.

(s) (1) Make grants-in-aid to any participating small or rural hospital, as defined in Section 124840 of the Health and Safety Code, in connection with the financing of a project or for working capital in accordance with an agreement between the authority and the hospital. However, no grant to finance a project shall exceed the total cost of the project, as determined by the hospital and approved by the authority.

(2) Make grants-in-aid to any small or rural hospital, as defined in Section 124840 of the Health and Safety Code, in accordance with an agreement between the authority and the hospital to discharge indebtedness incurred by the hospital in connection with projects undertaken, for health facilities acquired, or for working capital financed prior to the effective date of this subdivision.

(3) Grants shall be made pursuant to this subdivision only from HELP Program funds, not to exceed eight hundred seventy thousand dollars ($870,000). In consultation with representatives of the hospital industry and other affected parties, the authority shall develop a process and criteria for making grants under this subdivision, including obtaining legal opinions on appropriateness of grants to private facilities for capital outlay purposes.

SEC. 2. Section 15439 of the Government Code is amended to read:

15439. (a) The California Health Facilities Authority Fund is continued in existence in the State Treasury as the California Health Facilities Financing Authority Fund. All money in the fund is hereby continuously appropriated to the authority for carrying out the purposes of this division. The authority may pledge any or all of the moneys in the fund as security for payment of the principal of, and interest on, any particular issuance of bonds issued pursuant to this part, and, for that purpose or as necessary or convenient to the accomplishment of any other purpose of the authority, may divide the fund into separate accounts. All moneys accruing to the authority pursuant to this part from whatever source shall be deposited in the fund.

(b) Subject to the priorities which may be created by the pledge of particular moneys in the fund to secure any issuance of bonds of the authority, and subject further to the cost of loans provided by the authority pursuant to subdivisions (i) and (j) of Section 15438, and subject further to any reasonable costs which may be incurred by the authority in administering the program authorized by this division, all moneys in the fund derived from any source shall be held in trust for the security and payment of bonds of the authority and shall not be used or pledged for any other purpose so long as such bonds are outstanding and unpaid. However, nothing in this section shall limit the power of the authority to make loans with the proceeds of bonds in accordance with the terms of the resolution authorizing the same.

(c) Pursuant to any agreements with the holders of particular bonds pledging any particular assets, revenues, or moneys, the authority may create separate accounts in the fund to manage assets, revenues, or moneys in the manner set forth in the agreements.

(d) The authority may, from time to time, direct the State Treasurer to invest moneys in the fund which are not required for its current needs, including proceeds from the sale of any bonds, in the eligible securities specified in Section 16430 as the agency shall designate. The authority may direct the State Treasurer to deposit moneys in interest-bearing accounts in state or national banks or other financial institutions having principal offices in this state. The authority may alternatively require the transfer of moneys in the fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4. All interest or other increment resulting from an

investment or deposit shall be deposited in the fund, notwithstanding Section 16305.7. Moneys in the fund shall not be subject to transfer to any other fund pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4, excepting the Surplus Money Investment Fund.

(e) All moneys accruing to the authority from whatever source shall be deposited in the fund.

CHAPTER 843

An act relating to elections.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Notwithstanding any other provision of law, the Secretary of State shall designate Senate Constitutional Amendment 11 of the 1999–2000 Regular Session to appear as Proposition 1A on the ballot that is submitted to the voters at the March 7, 2000, statewide primary election.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the duties of the Secretary of State to designate Senate Constitutional Amendment 11 of the 1999–2000 Regular Session on the March 7, 2000 statewide primary election ballot as Proposition 1A are established at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 844

An act relating to public utilities.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. (a) The Public Utilities Commission shall conduct a study as to the ways to amend, revise, and improve rules governing the replacement of overhead electric and communications facilities

with underground facilities. The issues to be addressed shall include, but not be limited to, all of the following:

(1) Discovering and eliminating barriers to establishing continuity of the existing underground system and ways to eliminate uneven patches of overhead facilities.

(2) How to enhance public safety.

(3) How to improve reliability.

(4) How to provide more flexibility and control to local governments.

(b) The Public Utilities Commission may revise these rules without prior approval of the Legislature.

(c) Notwithstanding Section 7550.5 of the Government Code, the Public Utilities Commission shall submit a report on the study required by subdivision (a) to the Legislature on or before January 1, 2001.

CHAPTER 845

An act to add Sections 14110.55 and 14133.12 to, and to add and repeal Section 14495.10 of, the Welfare and Institutions Code, relating to developmental disabilities.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 14110.55 is added to the Welfare and Institutions Code, to read:

14110.55. For the purposes of the pilot program established under Section 14495.10, the department shall develop a reimbursement rate for continuous skilled nursing care services provided by a participating health facility to developmentally disabled individuals who meet the federal waiver eligibility criteria. The reimbursement rate shall be determined in accordance with a methodology that shall be developed by the department. The department may elect to establish individual patient-specific rates.

SEC. 2. Section 14133.12 is added to the Welfare and Institutions Code, to read:

14133.12. (a) The director shall apply utilization controls to continuous skilled nursing care services provided pursuant to the pilot program established under Section 14495.10, including, but not limited to, prior authorization and monitoring by the department. Prior authorization shall ensure that continuous skilled nursing care services are medically necessary, and that the provision of continuous skilled nursing care will avoid a transfer to, or placement at, a higher level of service. Monitoring shall be conducted by the department

including, but not limited to, evaluation of quality of life, health, safety, and well-being of the beneficiary, and quality, efficiency, and cost effectiveness of the continuous skilled nursing care services. The department shall consult with the State Department of Developmental Services and regional centers to design monitoring efforts.

(b) Payment of the reimbursement rates established pursuant to Section 14110.55 shall be subject to all billing criteria of the Medi-Cal program and the utilization controls set forth in this section.

(c) This section shall become operative only if the federal waiver identified under Section 14495.10 is approved by the federal Health Care Financing Administration. The director shall maintain a record of the satisfaction of this condition.

SEC. 3. Section 14495.10 is added to the Welfare and Institutions Code, to read:

14495.10. (a) The department shall establish a pilot program to provide continuous skilled nursing care as a benefit of the Medi-Cal program, when those services are provided in accordance with an approved federal waiver meeting the requirements of subdivision (b). "Continuous skilled nursing care" means medically necessary care provided by, or under the supervision of, a registered nurse within his or her scope of practice, seven days a week, 24 hours per day, in a health facility participating in the pilot program. This care shall include a minimum of eight hours per day provided by or under the direct supervision of a registered nurse. Each health facility providing continuous skilled nursing care in the pilot program shall have a minimum of one registered nurse or one licensed vocational nurse awake and in the facility at all times.

(b) The department shall submit to the federal Health Care Financing Administration, no later than April 1, 2000, a federal waiver request developed in consultation with the State Department of Developmental Services and the Association of Regional Center Agencies, pursuant to Section 1915(b) of the federal Social Security Act to provide continuous skilled nursing care services under the pilot program.

(c) (1) The pilot program shall be conducted to explore more flexible models of health facility licensure to provide continuous skilled nursing care to developmentally disabled individuals in the least restrictive health facility setting, and to evaluate the effect of the pilot program on the health, safety, and quality of life of individuals, and the cost effectiveness of this care. The evaluation shall include a review of the pilot program by an independent agency.

(2) Participation in the pilot program shall include 10 health facilities provided that the facilities meet all eligibility requirements. The facilities shall be approved by the department, in consultation with the State Department of Developmental Services and the appropriate regional center agencies, and shall meet the requirements of subdivision (e). Priority shall be given to facilities

with four to six beds, to the extent those facilities meet all other eligibility requirements.

(d) Under the pilot program established in this section, a developmentally disabled individual is eligible to receive continuous skilled nursing care if all of the following conditions are met:

(1) The developmentally disabled individual meets the criteria as specified in the federal waiver.

(2) The developmentally disabled individual resides in a health facility that meets the provider participation criteria as specified in the federal waiver.

(3) The continuous skilled nursing care services are provided in accordance with the federal waiver.

(4) The continuous skilled nursing care services provided to the developmentally disabled individual do not result in costs that exceed the fiscal limit established in the federal waiver.

(e) A health facility seeking to participate in the pilot program shall provide care for developmentally disabled individuals who require the availability of continuous skilled nursing care, in accordance with the terms of the pilot program. During participation in the pilot program, the health facility shall comply with all the terms and conditions of the federal waiver described in subdivision (b), and shall not be subject to licensure or inspection under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code. Upon termination of the pilot program and verification of compliance with Section 1265 of the Health and Safety Code, the department shall immediately reinstate the participating health facility's previous license for the balance of time remaining on the license when the health facility began participation in the pilot program.

(f) The department shall implement this pilot program only to the extent it can demonstrate fiscal neutrality, as required under the terms of the federal waiver, and only if the department has obtained the necessary approvals to implement the pilot program and receives federal financial participation from the federal Health Care Financing Administration.

(g) In implementing this article, the department may enter into contracts for the provision of essential administration and other services. Contracts entered into under this section may be on a noncompetitive bid basis and shall be exempt from the requirements of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract 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 becomes effective on or before January 1, 2003, deletes or extends that date.

SEC. 4. Emergency regulations may be adopted as necessary to implement this act, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of

Part 1 of Division 3 of Title 2 of the Government Code), 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. These regulations shall be transmitted 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 adopted regulations shall be transmitted directly to the Secretary of State with the rulemaking file and the certification of compliance as required by subdivision (e) of Section 11346.1 of the Government Code.

CHAPTER 846

An act to amend Sections 4320 and 4330 of the Family Code, relating to marriage.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 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.

(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. Except in the case of a marriage of long duration as described in Section 4336, 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, Section 4336, and the circumstances of the parties.

(*l*) Any other factors the court determines are just and equitable.

SEC. 1.5. 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. Except in the case of a marriage of long duration as described in Section 4336, 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, Section 4336, and the circumstances of the parties.

(*l*) Any other factors the court determines are just and equitable.

SEC. 2. Section 4330 of the Family Code is amended to read:

4330. (a) In a judgment of dissolution of marriage or legal separation of the parties, the court may order a party to pay for the support of the other party an amount, for a period of time, that the court determines is just and reasonable, based on the standard of living established during the marriage, taking into consideration the circumstances as provided in Chapter 2 (commencing with Section 4320).

(b) When making an order for spousal support, the court may advise the recipient of support that he or she should make reasonable efforts to assist in providing for his or her support needs, taking into account the particular circumstances considered by the court pursuant to Section 4320, unless, in the case of a marriage of long duration as provided for in Section 4336, the court decides this warning is inadvisable.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 4320 of the Family Code proposed by both this bill and AB 808. 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 4320 of the Family Code, and (3) this bill is enacted after AB 808, in which case Section 1 of this bill shall not become operative.

CHAPTER 847

An act to add Section 100236 to the Health and Safety Code, relating to health.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 100236 is added to the Health and Safety Code, to read:

100236. (a) Within 60 days of enactment of the Budget Act, the department shall advance to a local health department 25 percent of the annual General Fund allocation, subvention, or reimbursement required by a local health department for the delivery of services specified in subdivision (b). In determining the dollar amount of the 25 percent allocation, subvention, or reimbursement, the department shall use the local health department's prior year's or the most recently completed fiscal year's allocation.

(b) Subdivision (a) shall apply to the following health programs and General Fund funding sources:

(1) Funding for administration for the California Children's Services Program (Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106).

(2) Funding for medical therapy for the California Children's Services Program (Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106).

(3) Funding for administration for the Child Health and Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106).

(4) Funding for HIV education and prevention services under Section 100119.

(c) This section shall not apply to a local health department that is three or more quarters in arrears in billing the state for the programs specified in subdivision (b).

(d) For purposes of this section, "local health department" has the same meaning as that set forth in Section 101185.

CHAPTER 848

An act to amend Sections 129010, 129020, 129035, 129040, 129050, 129055, 129065, 129080, 129090, 129100, 129105, 129173, 129174, 129200, and 129210 of, to add Sections 129045, 129051, 129087, 129092, and 129152 to, to add Article 5.5 (commencing with Section 129220) to Chapter 1 of Part 6 of Division 107 of, to repeal Section 129025 of, and to repeal and add Section 129075 of, the Health and Safety Code, relating to health facilities.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 129010 of the Health and Safety Code is amended to read:

129010. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter and of Section 32127.2.

(a) "Bondholder" means the legal owner of a bond or other evidence of indebtedness issued by a political subdivision or a nonprofit corporation.

(b) "Borrower" means a political subdivision or nonprofit corporation that has secured or intends to secure a loan for the construction of a health facility.

(c) "Construction, improvement, or expansion" or "construction, improvement, and expansion" includes construction of new buildings, expansion, modernization, renovation, remodeling and alteration of existing buildings, acquisition of existing buildings or health facilities, and initial or additional equipping of any of these buildings.

In connection therewith, "construction, improvement, or expansion" or "construction, improvement, and expansion" includes the cost of construction or acquisition of all structures, including parking facilities, real or personal property, rights, rights-of-way, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land where the buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest (prior to, during and for a period after completion of the construction), provisions for working capital, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing or incident to the construction; or the financing of the construction or acquisition.

(d) "Commission" means the California Health Policy and Data Advisory Commission.

(e) "Committee" means the Advisory Loan Insurance Committee.

(f) "Debenture" means any form of written evidence of indebtedness issued by the State Treasurer pursuant to this chapter, as authorized by Section 4 of Article XVI of the California Constitution.

(g) "Fund" means the Health Facility Construction Loan Insurance Fund.

(h) "Health facility" means any facility providing or designed to provide services for the acute, convalescent, and chronically ill and

impaired, including, but not limited to, public health centers, community mental health centers, facilities for the developmentally disabled, nonprofit community care facilities that provide care, habilitation, rehabilitation or treatment to developmentally disabled persons, facilities for the treatment of chemical dependency, including a community care facility, licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2, a clinic, as defined pursuant to Chapter 1 (commencing with Section 1200) of Division 2, an alcoholism recovery facility, defined pursuant to former Section 11834.11, and a structure located adjacent or attached to another type of health facility and that is used for storage of materials used in the treatment of chemical dependency, and general tuberculosis, mental, and other types of hospitals and related facilities, such as laboratories, outpatient departments, extended care, nurses' home and training facilities, offices and central service facilities operated in connection with hospitals, diagnostic or treatment centers, extended care facilities, nursing homes, and rehabilitation facilities. "Health facility" also means an adult day health center and a multilevel facility. Except for facilities for the developmentally disabled, facilities for the treatment of chemical dependency, or a multilevel facility, or as otherwise provided in this subdivision, "health facility" does not include any institution furnishing primarily domiciliary care.

"Health facility" also means accredited nonprofit work activity programs as defined in subdivision (e) of Section 19352 and Section 19355 of the Welfare and Institutions Code, and nonprofit community care facilities as defined in Section 1502, excluding foster family homes, foster family agencies, adoption agencies, and residential care facilities for the elderly.

Unless the context dictates otherwise, "health facility" includes a political subdivision of the state or nonprofit corporation that operates a facility included within the definition set forth in this subdivision.

(i) "Office" means the Office of Statewide Health Planning and Development.

(j) "Lender" means the provider of a loan and its successors and assigns.

(k) "Loan" means money or credit advanced for the costs of construction or expansion of the health facility, and includes both initial loans and loans secured upon refinancing and may include both interim, or short-term loans, and long-term loans. A duly authorized bond or bond issue, or an installment sale agreement, may constitute a "loan."

(*l*) "Maturity date" means the date that the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for by the terms of the loan.

(m) "Mortgage" means a first mortgage on real estate. "Mortgage" includes a first deed of trust.

(n) "Mortgagee" includes a lender whose loan is secured by a mortgage. "Mortgagee" includes a beneficiary of a deed of trust.

(o) "Mortgagor" includes a borrower, a loan to whom is secured by a mortgage, and the trustor of a deed of trust.

(p) "Nonprofit corporation" means any corporation formed under or subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) that is organized for the purpose of owning and operating a health facility and that also meets the requirements of Section 501(c)(3) of the Internal Revenue Code.

(q) "Political subdivision" means any city, county, joint powers entity, local hospital district, or the California Health Facilities Authority.

(r) "Project property" means the real property where the health facility is, or is to be, constructed, improved, or expanded, and also means the health facility and the initial equipment in that health facility.

(s) "Public health facility" means any health facility that is or will be constructed for and operated and maintained by any city, county, or local hospital district.

(t) "Adult day health center" means a facility defined under subdivision (b) of Section 1570.7, that provides adult day health care, as defined under subdivision (a) of Section 1570.7.

(u) "Multilevel facility" means an institutional arrangement where a residential facility for the elderly is operated as a part of, or in conjunction with, an intermediate care facility, a skilled nursing facility, or a general acute care hospital. "Elderly," for the purposes of this subdivision, means a person 60 years of age or older.

(v) "State plan" means the plan described in Section 129020.

SEC. 2. Section 129020 of the Health and Safety Code is amended to read:

129020. The office shall implement the loan insurance program for the construction, improvement, and expansion of public and nonprofit corporation health facilities so that, in conjunction with all other existing facilities, the necessary physical facilities for furnishing adequate health facility services will be available to all the people of the state.

Every odd-numbered year the office shall develop a state plan for use under this chapter. The plan shall include an overview of the changes in the health care industry, an overview of the financial status of the fund and the loan insurance program implemented by the office, a statement of the guiding principles of the loan insurance program, an evaluation of the program's success in meeting its mission as outlined in Section 129005, a discussion of administrative, procedural, or statutory changes that may be needed to improve management of program risks or to ensure the program effectively addresses the health needs of Californians, and the priority needs to be addressed by the loan insurance program.

The health facility construction loan insurance program shall provide for health facility distribution throughout the state in a manner that will make all types of health facility services reasonably accessible to all persons in the state according to the state plan.

SEC. 3. Section 129025 of the Health and Safety Code is repealed.

SEC. 4. Section 129035 of the Health and Safety Code is amended to read:

129035. From time to time the office or its designated agent shall inspect each project for which loan insurance was approved, as needed, and if the inspection so warrants, the office or agent shall certify that the work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of the loan proceeds is due to the borrower. The office shall charge the borrower a fee for these inspections and certifications, that in no instance shall exceed four dollars ($4) for each one thousand dollars ($1,000) of the borrower's loan that is insured. These fees shall be deposited in the fund.

SEC. 5. Section 129040 of the Health and Safety Code is amended to read:

129040. The office shall establish a premium charge for the insurance of loans under this chapter, and this charge shall be deposited in the fund. A one-time nonrefundable premium charge shall be paid at the time the loan is insured. The premium rate may vary based upon the assessed level of relative financial risk determined pursuant to Section 129051, but shall in no event be greater than 3 percent. The amount of premium shall be computed on the basis of the application of the rate to the total amount of principal and interest payable over the term of the loan. Amendments made to this section by this bill shall take effect on January 1, 2001.

SEC. 6. Section 129045 is added to the Health and Safety Code, to read:

129045. The office shall annually report to the Legislature the financial status of the program and its insured portfolio, including the status of all borrowers in each stage of default and the office's efforts to collect from borrowers that have defaulted on their debt service payments.

SEC. 7. Section 129050 of the Health and Safety Code is amended to read:

129050. A loan shall be eligible for insurance under this chapter if all of the following conditions are met:

(a) The loan shall be secured by a first mortgage, first deed of trust, or other first priority lien on a fee interest of the borrower and any other security agreement that the office may require subject only to those conditions, covenants and restrictions, easements, taxes, and assessments of record approved by the office, and other liens securing debt insured under this chapter.

(b) The borrower obtains an American Land Title Association title insurance policy with the office designated as beneficiary, with liability equal to the amount of the loan insured under this chapter, and with additional endorsements that the office may reasonably require.

(c) The proceeds of the loan shall be used exclusively for the construction, improvement, or expansion of the health facility, as approved by the office under Section 129020. However, loans insured pursuant to this chapter may include loans to refinance another prior loan, whether or not state insured and without regard to the date of the prior loan, if the office determines that the prior loan would have been eligible for insurance under this chapter at the time it was made. The office may not insure a loan for a health facility that the office determines is not needed pursuant to subdivision (k).

(d) The loan shall have a maturity date not exceeding 30 years from the date of the beginning of amortization of the loan, except as authorized by subdivision (e), or 75 percent of the office's estimate of the economic life of the health facility, whichever is the lesser.

(e) The loan shall contain complete amortization provisions requiring periodic payments by the borrower not in excess of its reasonable ability to pay as determined by the office. The office shall permit a reasonable period of time during which the first payment to amortization may be waived on agreement by the lender and borrower. The office may, however, waive the amortization requirements of this subdivision and of subdivision (g) of this section when a term loan would be in the borrower's best interest.

(f) The loan shall bear interest on the amount of the principal obligation outstanding at any time at a rate, as negotiated by the borrower and lender, as the office finds necessary to meet the loan money market. As used in this chapter, "interest" does not include premium charges for insurance and service charges if any. Where a loan is evidenced by a bond issue of a political subdivision, the interest thereon may be at any rate the bonds may legally bear.

(g) The loan shall provide for the application of the borrower's periodic payments to amortization of the principal of the loan.

(h) The loan shall contain those terms and provisions with respect to insurance, repairs, alterations, payment of taxes and assessments, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters the office may in its discretion prescribe.

(i) The loan shall have a principal obligation not in excess of an amount equal to 90 percent of the total construction cost.

(j) The borrower shall offer reasonable assurance that the services of the health facility will be made available to all persons residing or employed in the area served by the facility.

(k) The office has determined that the facility is needed by the community to provide the specified services. In making this determination, the office shall do all of the following:

(1) Require the applicant to describe the community needs the facility will meet and provide data and information to substantiate the stated needs.

(2) Require the applicant, if appropriate, to demonstrate participation in the community needs assessment required by Section 127350 of the Health and Safety Code.

(3) Survey appropriate local officials and organizations to measure perceived needs and verify the applicant's needs assessment.

(4) Use any additional available data relating to existing facilities in the community and their capacity.

(5) Contact other state and federal departments that provide funding for the programs proposed by the applicant to obtain those departments' perspectives regarding the need for the facility. Additionally, the office shall evaluate the potential effect of proposed health care reimbursement changes on the facility's financial feasibility.

(6) Consider the facility's consistency with the Cal-Mortgage state plan.

(*l*) In the case of acquisitions, a project loan shall be guaranteed only for transactions not in excess of the fair market value of the acquisition.

Fair market value shall be determined, for purposes of this subdivision, pursuant to the following procedure, that shall be utilized during the office's review of a loan guarantee application:

(1) Completion of a property appraisal by an appraisal firm qualified to make appraisals, as determined by the office, before closing a loan on the project.

(2) Evaluation of the appraisal in conjunction with the book value of the acquisition by the office. When acquisitions involve additional construction, the office shall evaluate the proposed construction to determine that the costs are reasonable for the type of construction proposed. In those cases where this procedure reveals that the cost of acquisition exceeds the current value of a facility, including improvements, then the acquisition cost shall be deemed in excess of fair market value.

(m) Notwithstanding subdivision (i), any loan in the amount of five million dollars ($5,000,000) or less may be insured up to 95 percent of the total construction cost.

In determining financial feasibility of projects of counties pursuant to this section, the office shall take into consideration any assistance for the project to be provided under Sections 14085.5 and 16715 of the Welfare and Institutions Code or from other sources. It is the intent of the Legislature that the office endeavor to assist counties in whatever ways are possible to arrange loans that will meet the requirements for insurance prescribed by this section.

(n) The project's level of financial risk meets the criteria in Section 129051.

SEC. 8. Section 129051 is added to the Health and Safety Code, to read:

129051. (a) The office shall develop and implement a system for assessing the relative financial risk of the applicant. The system shall include, but is not limited to, an assessment of the applicant's financial strength, credit history, security for the loan, cash-flow, and ability to repay the debt.

(b) The office shall establish a maximum acceptable level of financial risk for the projects it insures. The office may only approve a project if its risk level is below the established maximum, except as provided in subdivision (c).

(c) The office may approve a project with a level of insurance risk that exceeds the established maximum if the office determines that the project meets a significant community need or will be a sole community provider.

SEC. 9. Section 129055 of the Health and Safety Code is amended to read:

129055. In order to comply with subdivision (j) of Section 129050, any borrower that is certified for reimbursement for cost of care under Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code shall demonstrate that its facility is used by persons for whom the cost of care is reimbursed under that chapter, in a proportion that is reasonable based upon the proportion of Medi-Cal patients in the community served by the borrower and by persons for whom the costs of care is reimbursed under Title XVIII of the federal Social Security Act in a proportion that is reasonable based upon the proportion of Medicare patients in the community served by the borrower.

For the purposes of this chapter, the community means the service areas or patient populations for which the health facility provides health care services, unless the office determines that, or the borrower demonstrates to the satisfaction of the office that, a different definition is more appropriate for the borrower's facility.

SEC. 10. Section 129065 of the Health and Safety Code is amended to read:

129065. As part of its assurance under subdivision (j) of Section 129050, any borrower that is a general acute care hospital or acute psychiatric hospital shall agree to the following actions:

(a) To advise each person seeking services at the borrower's facility as to the person's potential eligibility for Medi-Cal and Medicare benefits or benefits from other governmental third party payers.

(b) To make available to the office and to any interested person a list of physicians with staff privileges at the borrower's facility, that includes:

(1) Name.

(2) Speciality.

(3) Language spoken.

(4) Whether takes Medi-Cal and Medicare patients.
(5) Business address and phone number.
(c) To inform in writing on a periodic basis all practitioners of the healing arts having staff privileges in the borrower's facility as to the existence of the facility's community service obligation. The required notice to practitioners shall contain a statement, as follows:
"This hospital has agreed to provide a community service and to accept Medi-Cal and Medicare patients. The administration and enforcement of this agreement is the responsibility of the Office of Statewide Health Planning and Development and this facility."
(d) To post notices in the following form, that shall be multilingual where the borrower serves a multilingual community, in appropriate areas within the facility, including but not limited to, admissions offices, emergency rooms, and business offices:

NOTICE OF COMMUNITY SERVICE OBLIGATION

"This facility has agreed to make its services available to all persons residing or employed in this area. This facility is prohibited by law from discriminating against Medi-Cal and Medicare patients. Should you believe you may be eligible for Medi-Cal or Medicare, you should contact our business office (or designated person or office) for assistance in applying. You should also contact our business office (or designated person or office) if you are in need of a physician to provide you with services at this facility. If you believe that you have been refused services at this facility in violation of the community service obligation you should inform (designated person or office) and the Office of Statewide Health Planning and Development."

The borrower shall provide copies of this notice for posting to all welfare offices in the county where the borrower's facility is located.
SEC. 11. Section 129075 of the Health and Safety Code is repealed.
SEC. 12. Section 129075 is added to the Health and Safety Code, to read:
129075. (a) Each borrower shall provide any reports as may be required of it by Part 5 (commencing with Section 127675), from which the office shall determine the borrower's compliance with subdivision (j) of Section 129050.
(b) If a report indicates noncompliance with subdivision (j) of Section 129050, Section 129055, or Section 129065, the office shall require the borrower to submit a plan detailing the steps and timetables the borrower will take to bring the facility into compliance.
(c) The office shall annually report to the Legislature the extent of the borrowers' compliance with their community service obligations pursuant to subdivision (j) of Section 129050, Section 129055, and Section 129065.

SEC. 13. Section 129080 of the Health and Safety Code is amended to read:

129080. The office may impose additional appropriate remedies and sanctions against a borrower when any of the following occurs:

(a) The office determines that the annual compliance report required in Section 129075 indicates that the borrower is out of compliance with subdivision (j) of Section 129050.

(b) A facility fails to carry out the actions agreed to in a plan approved by the office pursuant to Section 129070.

(c) The facility fails to submit compliance reports as required by Section 129075. The additional remedies include referring the violation to the office of Attorney General of California for legal action authorized under existing law or other remedy at law or equity.

However, the remedies obtainable by legal action shall not include withdrawal or cancellation of the loan insurance provided under this chapter.

SEC. 14. Section 129087 is added to the Health and Safety Code, to read:

129087. The office shall develop and maintain a formal system of monitoring borrowers, in order to assist the office in detecting at the earliest possible date those borrowers who are experiencing financial difficulties. This system shall include, but shall not be limited to, all of the following:

(a) A method of tracking the receipt of information that borrowers are required by law and regulatory agreement to submit to the office.

(b) A process for thoroughly reviewing borrowers' financial statements, budgets, auditor's management letters, and health facility utilization trends.

(c) Timely and structured site visits to insured facilities.

SEC. 15. Section 129090 of the Health and Safety Code is amended to read:

129090. Pursuant to this chapter, political subdivisions and nonprofit corporations may apply for state insurance of needed construction, improvement, or expansion loans for construction, remodeling, or acquisition of health facilities to be or already owned, established, and operated by them as provided in this chapter. Applications shall be submitted to the office by the nonprofit corporation or political subdivision authorized to construct and operate a health facility. Each application shall conform to the requirements of the office, shall be submitted in the manner and form prescribed by the office, and shall be accompanied by an application fee of one-half of 1 percent of the amount of the loan applied for, but in no case shall the application fee exceed five hundred dollars ($500). The fees shall be deposited by the office in the fund and used to defray the office's expenditures in the administration of this chapter.

SEC. 16. Section 129092 is added to the Health and Safety Code, to read:

129092. Notwithstanding any other provision of law, upon the application of a borrower for insurance, the office shall perform a feasibility study relating to the proposed project, the cost of which shall be paid by the applicant. The office may retain independent consultants and require a deposit from the applicant for such services, upon submission of the application. This section shall take effect on January 1, 2001.

SEC. 17. Section 129100 of the Health and Safety Code is amended to read:

129100. Every applicant for insurance shall be afforded an opportunity for a fair hearing before the commission upon 10 days' written notice to the applicant. If the office, after affording reasonable opportunity for development and presentation of the application and after receiving the advice of the commission, finds that an application complies with the requirements of this article and of Section 129020 and is otherwise in conformity with the state plan, it may approve the application for insurance. The office shall consider and approve applications in the order of relative need set forth in the state plan in accordance with Section 129020. Judicial review of a final decision made under this section may be had by filing a petition for writ of mandate. Any petition shall be filed within 30 days after the date of the final decision of the office.

SEC. 18. Section 129105 of the Health and Safety Code is amended to read:

129105. The office may upon application of the borrower insure any loan that is eligible for insurance under this chapter, and upon the terms prescribed by the office, may make commitments for the insuring of the loans prior to their date of execution or disbursement thereon. The decision to grant loan insurance upon an application of the borrower is within the discretion of the director of the office. Showing need for the project or meeting the eligibility requirements for loan insurance and establishing financial feasibility of the project or recommendation for approval from the committee does not create any entitlement to loan insurance.

SEC. 19. Section 129152 is added to the Health and Safety Code, to read:

129152. If a borrower fails to submit a required report, or upon any other default of any regulatory or contractual term or covenant, whether or not a default has been declared, the office first shall informally communicate with the borrower. If the borrower fails to submit the required report or otherwise cure the default, the office shall issue a formal demand in writing stating the nature of the default and requiring the borrower to submit a detailed plan of correction that is acceptable to the office. If the borrower fails to either submit a plan, or timely cure the default, the office shall perform an onsite visit. If the office determines the borrower is not

making sufficient progress in submitting any required reports or otherwise curing any default, the office may require the borrower, at the borrower's expense, to employ an independent consultant or professional, acceptable to the office, to conduct a program audit. If the borrower fails to adopt the recommendations of the independent consultant or professional made in the program audit, or if the borrower fails to otherwise timely cure the default, the office shall have all the remedies set forth in the Section 129173.

SEC. 20. Section 129173 of the Health and Safety Code is amended to read:

129173. (a) In fulfilling the purposes of this article, as set forth in Section 129005, and upon making a determination that the financial status of a borrower may jeopardize a borrower's ability to fulfill its obligations under any insured loan transaction so as to threaten the economic interest of the office in the borrower or to jeopardize the borrower's ability to continue to provide needed health care services in its community, including, but not limited to, a declaration of default under any contract related to the transaction, the borrower missing any payment to its lender, or the borrower's accounts payable exceeding three months, the office may assume or direct managerial or financial control of the borrower in any or all of the following ways:

(1) The office may supervise and prescribe the activities of the borrower in the manner and under the terms and conditions as the office may stipulate in any contract with the borrower.

(2) Notwithstanding the provisions of the articles of incorporation or other documents of organization of a nonprofit corporation borrower, this control may be exercised through the removal and appointment by the office of members of the governing body of the borrower sufficient so that the new members constitute a voting majority of the governing body.

(3) In the event the borrower is a nonprofit corporation or a political subdivision, the office may request the Secretary of the California Health and Human Services Agency to appoint a trustee. The trustee shall have full and complete authority of the borrower over the insured project, including all property on which the office holds a security interest. No trustee shall be appointed unless approved by the office. A trustee appointed by the secretary pursuant to this subdivision may exercise all the powers of the officers and directors of the borrower, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the office or a trustee by reason of their exercising the powers of the officers and directors of a borrower pursuant to the direction of, or with the approval of, the secretary.

(4) The office may institute any action or proceeding, or the office may request the Attorney General to institute any action or proceeding against any borrower, to obtain injunctive or other equitable relief, including the appointment of a receiver for the

borrower or the borrower's assets, in the superior court in and for the county in which the assets or a substantial portion of the assets are located. The proceeding under this section for injunctive relief shall conform with the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the office shall not be required to allege facts necessary to show lack of adequate remedy at law, or to show irreparable loss or damage. Injunctive relief may compel the borrower, its officers, agents, or employees to perform each and every provision contained in any regulatory agreement, contract of insurance, or any other loan closing document to which the borrower is a party, or any obligation imposed on the borrower by law, and require the carrying out of any and all covenants and agreements and the fulfillment of all duties imposed on the borrower by law or those documents.

A receiver may be appointed pursuant to Chapter 5 (commencing with Section 564) of Title 7 of Part 2 of the Code of Civil Procedure. In cooperation with the Attorney General, the office shall develop and maintain a list of receivers who have demonstrated experience both in the health care field and as a receiver. Upon a proper showing, the court shall grant the relief provided by law and requested by the office or the Attorney General. No receiver shall be appointed unless approved by the office. The office shall establish reporting requirements for receivers to ensure that the office is fully apprised of all costs incurred and progress made by the receiver. A receiver appointed by the superior court pursuant to this subdivision and Section 564 of the Code of Civil Procedure may, with the approval of the court, exercise all of the powers of the officers and directors of the borrower, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the office, the Attorney General, or a receiver by reason of their exercising the powers of the officers and directors of a borrower pursuant to the order of, or with the approval of, the superior court.

(5) The borrower shall inform the office in advance of all meetings of its governing body. The borrower shall not exclude the office from attending any meeting of the borrower's governing body.

(b) Other than the loan insured under this chapter, the office shall not be liable for any debt of a borrower, or to a borrower, as a result of the office asserting its legal remedies against a borrower insured under this chapter.

(c) It is the intent of the Legislature that this section is remedial in nature, and is applicable retroactively to any health facility construction loans in existence at the time of its enactment, to the extent that the application of this section does not unlawfully impair existing contract rights.

SEC. 21. Section 129174 of the Health and Safety Code is amended to read:

129174. (a) In the event a borrower has defaulted in making its payments on the loan insured by the office to the borrower's bond

trustee, at any time thereafter, the office may do both of the following:

(1) Defease a portion or all of the bonds or may purchase a portion or all of the bonds at a private or public sale or on the open market. For this purpose, the office may use any funds available, including, but not limited to, funds in the Health Facility Construction Loan Insurance Fund, funds that the office may receive either from settlement or recoveries from lawsuits, funds from the sale of assets of the borrower, or funds held by the borrower's bond trustee. If requested by the office, the Treasurer shall purchase the bonds on behalf of the office. Upon the purchase of any bonds under this section, the office shall direct the borrower's bond trustee to cancel the bonds purchased.

(2) Issue bonds used for the sole purpose of refunding any part or all of the defaulted bonds, provided that, in the opinion of the office, there are adequate present value savings to refund all or part of the defaulted bonds. If requested by the office, the Treasurer shall act as the issuer for this purpose.

(b) For the purposes of this section, "bonds" mean bonds, certificate of participation, notes, or other evidence of indebtedness of a loan insured by the office.

SEC. 22. Section 129200 of the Health and Safety Code is amended to read:

129200. There is hereby established a Health Facility Construction Loan Insurance Fund, that shall be used by the office as a revolving fund for carrying out the provisions and administrative costs of this chapter. Notwithstanding Section 13340 of the Government Code, the money in the fund is hereby continuously appropriated to the office without regard to fiscal years for the purposes of this chapter.

SEC. 23. Section 129210 of the Health and Safety Code is amended to read:

129210. (a) The office's authorization to insure health facility construction, improvement, and expansion loans under this chapter shall be limited to a total of not more than three billion dollars ($3,000,000,000).

(b) Notwithstanding the limitation in subdivision (a), the office may exceed the specific dollar limitation in either of the following instances:

(1) Refinancing a preexisting loan, if the refinancing results in savings to the health facility and increases the probability that a loan can be repaid.

(2) The need for financing results from earthquakes or other natural disasters.

SEC. 24. Article 5.5 (commencing with Section 129220) is added to Chapter 1 of Part 6 of Division 107 of the Health and Safety Code, to read:

Article 5.5. Advisory Loan Insurance Committee

129220. The office shall establish an Advisory Loan Insurance Committee which shall be comprised of nine members, eight of whom shall be appointed by the director of the office. Of the nine members, seven shall be appointed from outside state government and two shall be appointed from inside state government. The Director of Finance shall appoint one of the members chosen from inside state government. The members of the committee shall be qualified in the field of financial analysis, management, operations, or construction, improvement, or expansion of health facilities. Those members appointed from outside state government shall be reimbursed one hundred dollars ($100) for each day spent in the performance of official duties. All members shall be reimbursed for reasonable and necessary expenses.

129221. The duties of the committee shall include, but not be limited to, the following:

(a) The committee shall assist the director of the office in formulating policy concerning financial analysis, management, operation, or construction, improvement, or expansion of health facilities, and shall, at the request of the director of the office, provide overall policy advice, guidance, and recommendations. The committee shall also provide the office with advice and comment on the state plan prepared pursuant to Section 129020.

(b) The committee shall also review and analyze the feasibility, level of financial risk, and community benefit assessments made by the office on applications submitted for approval. The committee shall recommend to the director whether an application should be approved and whether any conditions should be attached to that approval. Loans that are currently insured by the office and subsequently are refinanced to obtain a lower interest rate or emergency working capital loans insured pursuant to Section 129091 shall not require the review of the committee.

CHAPTER 849

An act to add and repeal Division 36 (commencing with Section 71200) of the Public Resources Code, relating to ballast water.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Division 36 (commencing with Section 71200) is added to the Public Resources Code, to read:

DIVISION 36. BALLAST WATER MANAGEMENT FOR CONTROL OF NONINDIGENOUS SPECIES

CHAPTER 1. GENERAL PROVISIONS

71200. Unless the context otherwise requires, the following definitions govern the construction of this division:

(a) "Ballast tank" means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(b) "Ballast water" means any water and suspended matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(c) "EEZ" means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 miles.

(d) "Exchange" means to replace the water in a ballast tank using either of the following methods:

(1) "Flow through exchange," means to flush out ballast water by pumping in mid-ocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of water have been changed to minimize the number of original organisms remaining in the tank.

(2) "Empty/refill exchange," means to pump out, until the tank is empty or as close to 100 percent as the master or operator determines is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then refilling the tank with mid-ocean waters.

(e) "Mid-ocean waters" means waters that are more than 200 nautical miles from land and at least 2,000 meters (6,560 feet, 1,093 fathoms) deep.

(f) "Nonindigenous species" means any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country into another.

(g) "Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, or association.

(h) "Sediments" means any matter settled out of ballast water within a vessel.

(i) "Waters of the state" means any surface waters, including saline waters, that are within the boundaries of the state.

(j) "Voyage" means any transit by a vessel destined for any California port from a port or place outside the EEZ, including intermediate stops at a port or place within the EEZ. For the purposes of this division, a transit by a vessel from a United States port

to any other United States port, if at any time the vessel operates outside the EEZ or equivalent zone of Canada, is also a voyage.

71201. (a) This division applies to all vessels, United States and foreign, carrying ballast water into the waters of the state after operating outside the EEZ, except those vessels described in Section 71202.

(b) This division applies to all ballast water and associated sediments taken on a vessel in areas less than 200 nautical miles from any shore, or with water that is less than 2,000 meters (6,560 feet, 1,093 fathoms) deep.

71201.5. This division does not authorize the discharge of oil or noxious liquid substances in a manner prohibited by state, federal or international laws or regulations. Ballast water carried in any tank containing a residue of oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

71202. This division does not apply to any of the following vessels:

(a) A crude oil tanker engaged in the coastwise trade, as implemented by the United States Coast Guard in accordance with the National Invasive Species Act of 1996.

(b) A passenger vessel equipped with a functioning treatment system designed to kill nonindigenous species in the ballast water if both of the following apply:

(1) The State Lands Commission has determined that the system is at least as effective as ballast water exchange at reducing the risk of transfer of nonindigenous species in the ballast water of passenger vessels.

(2) The master, operator, or person in charge of the vessel operates, or ensures the operation of, the treatment system as designed.

(c) A vessel of the United States Department of Defense or United States Coast Guard subject to the requirements of Section 1103 of the National Invasive Species Act of 1996, or any vessel of the armed forces, as defined in Section 1322(a)(14) of Title 33 of the United States Code that is subject to the "Uniform National Discharge Standards for Vessels of the Armed Forces" pursuant to Section 1322(n) of Title 33 of the United States Code.

(d) A vessel that discharges ballast water or sediments only at the location where the ballast water or sediments originated, if the ballast water or sediments do not mix with ballast water or sediments from areas other than mid-ocean waters.

(e) A vessel in innocent passage, which is a foreign vessel merely traversing the territorial sea of the United States and not entering or departing a United States port, or not navigating the internal waters of the United States. However, it is the intent of the Legislature that a vessel described in this subdivision does not discharge ballast water into the waters of the state, or into waters that may impact waters of the state, unless the vessel meets the requirements of Section 71204.

CHAPTER 2. BALLAST WATER MANAGEMENT REQUIREMENTS

71203. (a) The master, operator, or person in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers.

(b) (1) The master, operator, or person in charge of a vessel is not required by this division to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions.

(2) If a determination described in paragraph (1) is made, it is the intent of the Legislature that the master, operator, or person in charge of the vessel consider taking all feasible measures that do not compromise the safety of the vessel to minimize the discharge of ballast water containing nonindigenous species into the waters of the state, or waters that may impact waters of the state.

(c) Nothing in this division relieves the master, operator, or person in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility.

71204. (a) Subject to Section 71203, the master, operator, or person in charge of a vessel shall employ at least one of the following ballast water management practices for ballast water carried into the waters of the state from areas outside the EEZ:

(1) Exchange ballast water outside the EEZ, from an area not less than 200 nautical miles from any shore, and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep, before entering the waters of the state.

(2) Retain the ballast water on board the vessel.

(3) Use an alternative environmentally sound method of ballast water management that has been approved by the State Lands Commission before the vessel begins the voyage, and that is at least as effective as ballast water exchange in removing or killing nonindigenous species.

(4) Discharge ballast water to an approved reception facility.

(5) Under extraordinary conditions, conduct a ballast water exchange within an area agreed to by the State Lands Commission at the time of the request.

(b) Subject to Section 71203, the master, owner, operator, or person in charge of all vessels equipped with ballast water tanks that operate in the waters of the state shall do all of the following to minimize the uptake and the release of nonindigenous species:

(1) Avoid the discharge or uptake of ballast water in areas within or that may directly affect marine sanctuaries, marine preserves, marine parks, or coral reefs.

(2) Minimize or avoid uptake of ballast water in all of the following areas and circumstances:

(A) Areas known to have infestations or populations of harmful organisms and pathogens.

(B) Areas near a sewage outfall.

(C) Areas near dredging operations.

(D) Areas where tidal flushing is known to be poor or times when a tidal stream is known to be more turbid.

(E) In darkness when bottom-dwelling organisms may rise up in the water column.

(F) Where propellers may stir up the sediment.

(3) (A) Clean the ballast tanks regularly to remove sediments.

(B) Clean the ballast tanks in mid-ocean waters or under controlled arrangements in port, or at drydock.

(C) Dispose of sediments in accordance with local, state, and federal law.

(4) Discharge only the minimal amount of ballast water essential for vessel operations while in the waters of the state.

(5) Rinse anchors and anchor chains when retrieving the anchor to remove organisms and sediments at their place of origin.

(6) Remove fouling organisms from hull, piping, and tanks on a regular basis and dispose of any removed substances in accordance with local, state, and federal law.

(7) Maintain a ballast water management plan that was prepared specifically for the vessel.

(8) Train the master, operator, person in charge, and crew, on the application of ballast water and sediment management and treatment procedures.

71205. (a) (1) The master, owner, operator, agent, or person in charge of a vessel carrying ballast water into the waters of the state after operating outside the EEZ shall provide the information described in subdivision (c) in electronic or written form to the State Lands Commission before the vessel departs from the first port of call in California.

(2) The information described in subdivision (c) shall be submitted using the form developed by the United States Coast Guard pursuant to the National Invasive Species Act of 1996.

(b) If the information submitted in accordance with this section changes, an amended form shall be submitted to the State Lands Commission before the vessel departs the waters of the state.

(c) (1) The master, owner, operator, or person in charge of a vessel carrying ballast water into the waters of the state after operating outside the EEZ, shall maintain on board the vessel, in written form, records that include all of the following information:

(A) Vessel information, including all of the following:

(i) Name.

(ii) International Maritime Organization number or official number if the International Maritime Organization number has not been assigned.

(iii) Vessel type.

(iv) Owner or operator.
(v) Gross tonnage.
(vi) Call sign.
(vii) Port of Registry.

(B) Voyage information, including the date and port of arrival, vessel agent, last port and country of call, and next port and country of call.

(C) Ballast water information, including the total ballast water capacity, total volume of ballast water onboard, total number of ballast water tanks, and total number of ballast water tanks in ballast, using units of measurements such as metric tons (MT), cubic meters (m3), long tons (LT), and short tons (ST).

(D) Ballast Water Management, including all of the following information:

(i) The total number of ballast tanks or holds, the contents of which are to be discharged into the waters of the state or to a reception facility.

(ii) If an alternative ballast water management method is used, the number of tanks that were managed using an alternative method, as well as the type of method used.

(iii) Whether the vessel has a ballast water management plan and International Maritime Organization guidelines on board, and whether the ballast water management plan is used.

(E) Information on ballast water tanks, the contents of which are to be discharged into the waters of the state or to a reception facility, including all of the following:

(i) The origin of ballast water, including the date and location of intake, volume, and temperature. If a tank has been exchanged, the identity of the loading port of the ballast water that was discharged during the exchange.

(ii) The date, location, volume, method, thoroughness measured by percentage exchanged if exchange is conducted, and sea height at time of exchange if exchange conducted, of any ballast water exchanged or otherwise managed.

(iii) The expected date, location, volume, and salinity of any ballast water to be discharged into the waters of the state or a reception facility.

(F) Discharge of sediment and, if sediment is to be discharged within the state, the location of the facility where the disposal will take place.

(G) Certification of accurate information, which shall include the printed name, title, and signature of the master, owner, operator, person in charge, or responsible officer attesting to the accuracy of the information provided and certifying compliance with the requirements of this division.

(H) Changes to previously submitted information.

(2) The master, owner, operator, or person in charge of a vessel subject to this subdivision shall retain a signed copy of the

information described in this subdivision on board the vessel for two years.

71206. (a) The State Lands Commission, in coordination with the United States Coast Guard, shall take samples of ballast water and sediment, examine documents, and make other appropriate inquiries to assess the compliance of any vessel subject to this division.

(b) The master, owner, operator, or person in charge of a vessel subject to this division shall make available to the State Lands Commission, upon request of that commission, the records required by Section 71205.

(c) The State Lands Commission, in coordination with the United States Coast Guard, shall compile the information obtained from submitted reports. The information shall be used, in conjunction with existing information relating to the number of vessel arrivals, to assess vessel reporting rates and compliance with the requirements of this division.

71207. (a) This division describes the state program to regulate discharges of ballast water from vessels in order to limit the introduction of nonindigenous species. Unless required by federal law, a state agency, board, commission, or department shall not, prior to January 1, 2004, impose any requirements that are different from those set forth in this division.

(b) Nothing in this division restricts state agencies from enforcing the provisions of this division.

(c) Any person violating this division is subject to civil liability in accordance with Chapter 5 (commencing with Section 71216).

(e) The State Lands Commission may require any vessel operating in violation of this division to depart the waters of the state and exchange, treat or otherwise manage the ballast water at a location determined by the commission, unless the master determines that the departure or exchange would threaten the safety or stability of the vessel, its crew, or its passengers because of adverse weather, vessel architecture design, equipment failure, or any other extraordinary condition.

CHAPTER 3. RESEARCH AND PROGRAM EVALUATION

71210. (a) The State Water Resources Control Board, in consultation with the Department of Fish and Game, the State Lands Commission, the United States Coast Guard, the regulated industry, and other stakeholders, shall evaluate alternatives for treating and otherwise managing ballast water for the purpose of eliminating the discharge of nonindigenous species into the waters of the state or into waters that impact the waters of the state. Whenever possible, the evaluation shall utilize appropriate existing data.

(b) The evaluation shall be completed and submitted to the Legislature and available to the public, on or before December 31, 2002, and shall include, but not be limited to, a description of

recommended best available technologies that reflect the greatest degree of reduction in the release of nonindigenous species that is economically feasible, the relative effectiveness of those technologies in minimizing the discharge of nonindigenous species, and the costs of implementing those technologies.

71211. (a) The Department of Fish and Game, in consultation with the State Water Resources Control Board, the State Lands Commission, and the United States Coast Guard, shall conduct a study to establish baseline conditions in the coastal and estuarine waters of the state, which includes an inventory of the location and geographic range of resident nonindigenous species populations. Whenever possible, the study shall utilize appropriate existing data.

(b) The study shall be submitted to the Legislature, and available to the public, on or before December 31, 2002. Information generated by this study shall be of the type and in a format useful for subsequent studies and reports undertaken for any of the following purposes:

(1) The determination of alternative discharge zones.

(2) The identification of environmentally sensitive areas to be avoided for uptake or discharge of ballast water.

(3) The long-term effectiveness of discharge control measures.

(4) The assessment of potential risk zones where uptake shall be prohibited.

71212. Notwithstanding Section 7550.5 of the Government Code, on or before September 1, 2002, the State Lands Commission, in consultation with the State Water Resources Control Board, the Department of Fish and Game, and the United States Coast Guard, shall submit to the Legislature, and make available to the public, a report that includes, but is not limited to, all of the following:

(a) A summary of the information provided in the ballast water discharge report forms submitted to the State Lands Commission, including the volumes of ballast water exchanged, volumes discharged into state waters, types of ballast water treatment, and locations at which ballast water was loaded and discharged.

(b) Monitoring and inspection information collected by the State Lands Commission pursuant to this division, including a summary of compliance rates, categorized by geographic area and other groupings as information allows.

(c) An analysis of the monitoring and inspection information, including recommendations for actions to be undertaken to improve the effectiveness of the monitoring and inspection program.

(d) An evaluation of the effectiveness of the measures taken to reduce or eliminate the discharge of nonindigenous species from vessels, including recommendations regarding action that should be taken to improve the effectiveness of those measures.

(e) A summary of the research completed during the two-year period that precedes the release of the report, and ongoing research, on the release of nonindigenous species by vessels, including, but not limited to, the research described in Section 71213.

71213. The State Water Resources Control Board, the State Lands Commission, and the Department of Fish and Game shall conduct any research determined necessary to carry out the requirements of this division. The research may relate to the transport and release of nonindigenous species by vessels, the methods of sampling and monitoring of the nonindigenous species transported or released by vessels, the rate or risk of release or establishment of nonindigenous species in the waters of the state and resulting impacts, and the means by which to reduce or eliminate such a release or establishment. The research shall focus on assessing or developing methodologies for treating or otherwise managing ballast water to reduce or eliminate the discharge or establishment of nonindigenous species.

CHAPTER 4. EXOTIC SPECIES CONTROL FUND

71215. (a) The Exotic Species Control Fund is hereby created. The money in the fund, upon appropriation by the Legislature, shall be used to carry out this division.

(b) (1) The State Lands Commission shall establish a reasonable and appropriate fee to carry out this division in an amount not to exceed one thousand dollars ($1,000) per vessel voyage. This amount may be adjusted for inflation every two years.

(2) In establishing fees, the State Lands Commission may establish lower levels of fees and the maximum amount of fees for individual shipping companies or vessels. Any fee schedule established, including the level of fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaii or Alaska trades, the frequency of calls by particular vessels to California ports within a year, the ballast water practices of the vessels, and other relevant considerations.

(c) The fee shall be collected by the State Board of Equalization from the owner or operator of each vessel that enters a California port with ballast water loaded from outside the EEZ.

(d) Notwithstanding any other provision of law, all fees imposed pursuant to this section shall be deposited into the Exotic Species Control Fund.

(e) Notwithstanding any other provision of law, all penalties and payments collected for violations of any requirements of this division shall be deposited into the Exotic Species Control Fund.

CHAPTER 5. CIVIL PENALTIES

71216. (a) Except as provided in subdivision (b) or (c), any person who intentionally or negligently fails to comply with the requirements of this division may be liable for an administrative civil penalty in an amount which shall not exceed five thousand dollars ($5,000) for each violation. Each day of a continuing violation constitutes a separate violation.

(b) Any person who fails to comply with the reporting requirements set forth in Section 71205 may be liable for an administrative civil penalty in an amount which shall not exceed five hundred dollars ($500) per violation. Each day of a continuing violation constitutes a separate violation.

(c) Any person who, knowingly and with intent to deceive, falsifies a ballast water control report form may be liable for an administrative civil penalty in an amount which shall not exceed five thousand dollars ($5,000) per violation. Each day of a continuing violation constitutes a separate violation.

(d) The employees designated by the Executive Officer of the State Lands Commission may enforce the requirements of this division.

(e) Any violation of this division may be referred by the Executive Officer of the State Lands Commission to the administrator for oil spill response, as appointed by the Governor pursuant to Section 8670.4 of the Government Code, for the purpose of imposing administrative civil penalties.

(f) The administrator may issue a complaint to any person on whom civil liability may be imposed pursuant to this division. Any hearing required shall be conducted pursuant to Section 8670.68 of the Government Code.

CHAPTER 6. REPEAL

71271. This division 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 850

An act to amend Sections 5913, 5914, 5915, 5916, and 5919 of, and to add Sections 5920, 5921, 5922, 5923, 5924, and 5925 to, the Corporations Code, and to add Section 1260.1 to the Health and Safety Code, relating to health facilities.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 5913 of the Corporations Code is amended to read:

5913. Except for an agreement or transaction subject to Section 5914 or 5920, a corporation shall give written notice to the Attorney General 20 days before it sells, leases, conveys, exchanges, transfers or otherwise disposes of all or substantially all of its assets unless the

transaction is in the usual and regular course of its activities or unless the Attorney General has given the corporation a written waiver of this section as to the proposed transaction.

SEC. 2. Section 5914 of the Corporations Code is amended to read:

5914. (a) (1) Any nonprofit corporation that is subject to the public benefit corporation law and operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or operates or controls a facility that provides similar health care, shall be required to provide written notice to, and to obtain the written consent of, the Attorney General prior to entering into any agreement or transaction to do either of the following:

(A) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity when a material amount of the assets of the public benefit corporation are involved in the agreement or transaction.

(B) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit public benefit corporation to any for-profit corporation or entity or to any mutual benefit corporation or entity.

(2) The substitution of a new corporate member or members that transfers the control of, responsibility for, or governance of the nonprofit public benefit corporation shall be deemed a transfer for purposes of this article. The substitution of one or more members of the governing body, or any arrangement, written or oral, that would transfer voting control of the members of the governing body, shall also be deemed a transfer for purposes of this article.

(b) The notice to the Attorney General provided for in this section shall include and contain the information the Attorney General determines is required. The notice, including any other information provided to the Attorney General under this article, and that is in the public file, shall be made available by the Attorney General to the public in written form, as soon as is practicable after it is received by the Attorney General.

(c) This section shall not apply to a public benefit corporation if the agreement or transaction is in the usual and regular course of its activities or if the Attorney General has given the corporation a written waiver of this section as to the proposed agreement or transaction.

(d) This section shall apply to any foreign nonprofit corporation that operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or a facility that provides similar health care.

SEC. 3. Section 5915 of the Corporations Code is amended to read:

5915. Within 60 days of the receipt of the written notice required by Section 5914, the Attorney General shall notify the public benefit

corporation in writing of the decision to consent to, give conditional consent to, or not consent to the agreement or transaction. The Attorney General may extend this period for one additional 45-day period if any of the following conditions are satisfied:

(a) The extension is necessary to obtain information pursuant to subdivision (a) of Section 5919.

(b) The proposed agreement or transaction is substantially modified after the first public meeting conducted by the Attorney General in accordance with Section 5916.

(c) The proposed agreement or transaction involves a multifacility health system serving multiple communities, rather than a single facility.

SEC. 4. Section 5916 of the Corporations Code is amended to read:

5916. Prior to issuing any written decision referred to in Section 5915, the Attorney General shall conduct one or more public meetings, one of which shall be in the county in which the facility is located, to hear comments from interested parties. At least 14 days before conducting the public meeting, the Attorney General shall provide written notice of the time and place of the meeting through publication in one or more newspapers of general circulation in the affected community and to the board of supervisors of the county in which the facility is located. If a substantive change in the proposed agreement or transaction is submitted to the Attorney General after the initial public meeting, the Attorney General may conduct an additional public meeting to hear comments from interested parties with respect to that change.

SEC. 5. Section 5919 of the Corporations Code is amended to read:

5919. (a) Within the time periods designated in Section 5915 and relating to those factors specified in Section 5917, the Attorney General may do the following:

(1) Contract with, consult, and receive advice from any state agency on those terms and conditions that the Attorney General deems appropriate.

(2) In his or her sole discretion, contract with experts or consultants to assist in reviewing the proposed agreement or transaction.

(b) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into under this section 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 nonprofit public benefit corporation, upon request, shall pay the Attorney General promptly for all contract costs.

(c) The Attorney General shall be entitled to reimbursement from the nonprofit public benefit corporation for all actual, reasonable, direct costs incurred in reviewing, evaluating, and

making the determination referred to in this article, including administrative costs. The nonprofit public benefit corporation shall promptly pay the Attorney General, upon request, for all of those costs.

(d) (1) In order to monitor effectively ongoing compliance with the terms and conditions of any sale or transfer of assets subject to Section 5914, including, but not limited to, the ongoing use of the charitable assets in a manner consistent with the trust pursuant to which they are held, the Attorney General may, in his or her sole discretion, contract with experts and consultants to assist in this regard.

(2) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into under this section 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 public benefit corporation shall pay the Attorney General promptly for all contract costs.

(3) The Attorney General shall be entitled to reimbursement from the public benefit corporation for all actual, reasonable, and direct costs incurred in monitoring ongoing compliance with the terms and conditions of the sale or transfer of assets, including administrative costs. The public benefit corporation shall promptly pay the Attorney General upon request for all of those costs.

SEC. 6. Section 5920 is added to the Corporations Code, to read:

5920. (a) (1) Any nonprofit corporation that is subject to the public benefit corporation law and operates or controls a health care facility, as defined in Section 1250 of the Health and Safety Code, or operates or controls a facility that provides similar health care, shall be required to provide written notice to, and to obtain the written consent of, the Attorney General prior to entering into any agreement or transaction to do either of the following:

(A) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to another public benefit corporation or entity when a material amount of the assets of the public benefit corporation are involved in the agreement or transaction.

(B) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit public benefit corporation to another public benefit corporation or entity.

(2) The substitution of a new corporate member or members that transfers the control of, responsibility for, or governance of the nonprofit public benefit corporation, the substitution of one or more members of the governing body that would transfer voting control of the members of the governing body, or any arrangement, written or oral, that would transfer voting control of the entity shall be deemed a transfer for purposes of this article.

(b) The notice to the Attorney General provided for in this section shall contain the information the Attorney General determines is

required. The notice, including any other information provided to the Attorney General under this article, and that is the public file, shall be made available by the Attorney General to the public in written form, as soon as is practicable after it is received by the Attorney General.

(c) This section shall not apply to a public benefit corporation if the agreement or transaction is in the usual and regular course of its activities or if the Attorney General has given the corporation a written waiver of this section as to the proposed agreement or transaction.

(d) This section shall apply to any foreign nonprofit corporation that operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or a facility that provides similar health care.

(e) This section shall not apply to an agreement or transaction if the other party to the agreement or transaction is an affiliate, as defined in Section 5031, of the transferring nonprofit public benefit corporation or entity, and the corporation or entity has given the Attorney General 20 days advance notice of the agreement or transaction.

SEC. 7. Section 5921 is added to the Corporations Code, to read:

5921. Within 60 days of the receipt of the written notice required by Section 5920, the Attorney General shall notify the public benefit corporation in writing of the decision to consent to, give conditional consent to, or not consent to the agreement or transaction. The Attorney General may extend this period for one additional 45-day period if any of the following conditions are satisfied:

(a) The extension is necessary to obtain relevant information from any state agency, experts, or consultants.

(b) The proposed agreement or transaction is substantially modified after the first public meeting conducted by the Attorney General in accordance with Section 5922.

(c) The proposed agreement or transaction involves a multifacility health system serving multiple communities, rather than a single facility.

SEC. 8. Section 5922 is added to the Corporations Code, to read:

5922. Prior to issuing any written decision referred to in Section 5921, the Attorney General shall conduct one or more public meetings, one of which shall be in the county in which the facility is located, to hear comments from interested parties. At least 14 days before conducting the public meeting, the Attorney General shall provide written notice of the time and place of the meeting through publication in one or more newspapers of general circulation in the affected community and to the board of supervisors of the county in which the facility is located. If a substantive change in the proposed agreement or transaction is submitted to the Attorney General after the initial public meeting, the Attorney General may conduct an

additional public meeting to hear comments from interested parties with respect to that change.

SEC. 9. Section 5923 is added to the Corporations Code, to read:

5923. The Attorney General shall have discretion to consent to, give conditional consent to, or not consent to any agreement or transaction described in subdivision (a) of Section 5920. In making the determination, the Attorney General shall consider any factors that the Attorney General deems relevant, including, but not limited to, whether any of the following apply:

(a) The agreement or transaction will result in inurement to any private person or entity.

(b) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated nonprofit health system.

(c) The agreement or transaction involves or constitutes any breach of trust.

(d) The Attorney General has been provided, pursuant to Section 5250, with sufficient information and data by the nonprofit public benefit corporation to evaluate adequately the agreement or transaction or the effects thereof on the public.

(e) The agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.

(f) The proposed agreement or transaction is in the public interest.

SEC. 10. Section 5924 is added to the Corporations Code, to read:

5924. (a) Within the time periods designated in Section 5921 and relating to those factors specified in Section 5923, the Attorney General may do the following:

(1) Contract with, consult, and receive advice from any state agency on those terms and conditions that the Attorney General deems appropriate.

(2) In his or her sole discretion, contract with experts or consultants to assist in reviewing the proposed agreement or transaction.

(b) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into under this section 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 selling nonprofit public benefit corporation, upon request, shall pay the Attorney General promptly for all contract costs.

(c) The Attorney General shall be entitled to reimbursement from the selling nonprofit public benefit corporation for all actual, reasonable, direct costs incurred in reviewing, evaluating, and making the determination referred to in Section 5921, including administrative costs. The selling nonprofit public benefit corporation

shall promptly pay the Attorney General, upon request, for all of those costs.

(d) (1) In order to effectively monitor ongoing compliance with the terms and conditions of any sale or transfer of assets subject to Section 5920, including, but not limited to, the ongoing use of the charitable assets in a manner consistent with the trust pursuant to which they are held, the Attorney General may, in his or her sole discretion, contract with experts and consultants to assist in this regard.

(2) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into under this section 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 selling nonprofit public benefit corporation shall pay the Attorney General promptly for all contract costs.

(3) The Attorney General shall be entitled to reimbursement from the selling public benefit corporation for all actual, reasonable, and direct costs incurred in monitoring ongoing compliance with the terms and conditions of the sale or transfer of assets, including administrative costs. The Attorney General shall be entitled to this reimbursement for a period of time not to exceed two years after any time period specified in the terms or conditions of sale or transfer of assets. The selling nonprofit public benefit corporation shall promptly pay the Attorney General upon request for all of those costs.

SEC. 11. Section 5925 is added to the Corporations Code, to read:

5925. The Attorney General may adopt regulations implementing Sections 5920 to 5924, inclusive.

SEC. 12. Section 1260.1 is added to the Health and Safety Code, to read:

1260.1. (a) Except as provided in subdivision (b), any member of the board of directors of a nonprofit corporation that is subject to Section 5920 of the Corporations Code, who negotiates the terms and conditions of a sale or transfer of assets, as described in Section 5920 of the Corporations Code, is prohibited from receiving, directly or indirectly, any salary, compensation, payment, or other form of remuneration from the purchasing public benefit corporation or entity following the close of the sale or other transfer of assets. This prohibition shall not apply to any reimbursement or payment made to a member of the board of directors, who is a physician or other health care provider, for direct patient care services provided to patients covered by a health insurer, health care service plan, employer, or other entity that provides health care coverage, and that is owned, operated, or affiliated with the purchasing public benefit corporation or entity, provided that the amounts payable for the services rendered are no greater than the amounts payable to

other physicians or health care providers providing the same or similar services.

For the purpose of this section, "direct patient care services" means health care services provided directly to a patient, and does not include services provided through an intermediary. Further, in order to qualify for the exemption in this subdivision, the direct patient care services must be health care services that are regularly provided by other physicians or other health care providers in the community who are also receiving reimbursements or payments from the same health insurer, health care service plan, employer, or other entity that is owned or operated by, or affiliated with, the purchasing public benefit corporation or entity.

(b) After a period of two years following the close of the sale or other transfer of assets, a person who was a member of the board of directors of the selling nonprofit corporation who is prohibited from receiving any remuneration from the purchasing public benefit corporation or entity under subdivision (a) may enter into usual and customary business transactions with the purchasing public benefit corporation or entity so long as the following facts are established:

(1) Prior to authorizing or approving the transaction, the representative of the purchasing public benefit corporation or entity considered and in good faith determined after reasonable investigation under the circumstances that the purchasing public benefit corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

(2) The purchasing public benefit corporation or entity, in fact, could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

(c) Any person who is a member of management of the selling nonprofit corporation and who presents information or opinions to the board regarding the sale or other transfer of assets as described in subdivision (a) that are relied upon, or considered by, any of the board members in making decisions regarding the sale or transfer, may make a written affirmative declaration that he or she will not work for, or receive any form of remuneration from, the purchasing public benefit corporation or entity in the future.

(d) In making any decision regarding the sale or other transfer of the nonprofit corporation's assets, as described in Section 5920 of the Corporations Code, the board of the selling nonprofit corporation is prohibited from substantially relying on any information presented by any person to whom subdivision (c) applies who has not made a written affirmative declaration pursuant to subdivision (c). This subdivision shall not apply to any person whose only role in the sale or transfer is to provide to the selling nonprofit corporation exclusively factual information about the selling nonprofit corporation, community, financial status, or other similar data.

(e) In performing those duties of a director set forth in subdivision (d), the board of directors may contract with independent counsel,

accountants, financial analysts, or other professionals whom the board believes to be reliable and competent in the matters presented, to review and evaluate information and advice presented by an employee who has not signed an affirmative declaration pursuant to subdivision (c). Any director who substantially relies on information and advice presented by the independent professional shall be deemed to have not violated subdivision (d).

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 851

An act to add and repeal Section 1596.7927 of the Health and Safety Code, and to add Section 11170.6 to the Penal Code, relating to care facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1596.7927 is added to the Health and Safety Code, to read:

1596.7927. (a) (1) There is hereby established a two-year pilot project in San Diego County, upon the adoption of a resolution to that effect by the City Council of San Diego. The program established for purposes of the pilot project authorized by this section shall be known as the "6 to 6" program.

(2) The mission of the "6 to 6" program shall encompass, but not be limited to, the following extended schoolday activities.

(A) Homework assistance.
(B) Academic enrichment.
(C) Reading.
(D) Tutoring.
(E) Creative and performing arts.
(F) Sports and recreational activities.

(b) The "6 to 6" program shall consist of an extended schoolday program that is operated by a community-based organization, child care agency, or other entity that has demonstrated the ability to provide services to schoolage children pursuant to a contract with a

public school district or city. The "6 to 6" program shall meet all of the following conditions:

(1) The program shall be operated on a schoolsite that is in current use by the public school or school district that has collaborated with the City of San Diego for the purpose of providing an extended schoolday program. The program shall serve the children who regularly attend school within the district or districts, exclusively. The hours of operation shall begin before school no earlier than 6:00 a.m. and operate after school to 6:00 p.m., except for evening parent meetings that may be scheduled later than 6:00 p.m.

(2) The city shall ensure all of the following:

(A) That employees of the operator of the "6 to 6" program have had a criminal background check performed by the Department of Justice. In this regard, the city shall ensure that the name of and identifying data about each prospective employee has been submitted to the Department of Justice to determine if the individual is listed in the department's child abuse index maintained pursuant to Section 11170 of the Penal Code. The city may deny participation of an individual in the "6-to-6" program if a purported incident of child abuse is determined, after independent investigation, to be substantiated as provided in Section 1522.1. The results of the criminal background check and child abuse index review shall be maintained by the city for purposes of notification of future convictions or suspected child abuse incidents.

(B) That each operator of the "6 to 6" program is familiar with and follows health-related services procedures as specified in Section 101226 of Title 22 of the California Code of Regulations.

(C) That each operator of the "6 to 6" program maintains emergency information on each child that includes, but is not limited to, the telephone number of the child's parents or guardians, the telephone number of the child's physician or the name and telephone number of the child's health plan or contact person, and an alternative name and number.

(3) Any individuals employed as site supervisors shall meet the center director qualifications specified in Section 101515 of Title 22 of the California Code of Regulations.

(4) All individuals employed by the "6 to 6" program shall be over the age of 18 years and shall meet, at a minimum, the minimum qualifications for an instructional aide established for purposes of Section 8483.4 of the Education Code, or the equivalent qualifications.

(5) All staff shall have training in cardiopulmonary resuscitation and first aid.

(6) All staff shall have a negative tuberculosis test or chest X-ray within the last three years.

(7) All staff shall be familiar with and adhere to the emergency procedures established by the school where the program is located.

(8) The contract with the city or school district shall include, but not be limited to, all of the following:

(A) A requirement that site directors meet the requirements for site directors of schoolage day care centers set forth in Section 1597.21.

(B) A requirement that the contractor require a child-to-staff ratio that is the pupil-to-staff ratio set forth in Section 8483.4 of the Education Code. The contract shall contain a provision that requires the contractor to maintain the minimum staffing ratio pursuant to this paragraph and shall contain protocols for maintaining required staffing ratios in the event of illness, accidents, and other emergencies and staffing breaks and other situations of absences.

(C) A requirement that the contractor comply with sign-in and sign-out regulations otherwise applicable by regulation to extended schoolday programs pursuant to Section 101529.1 of Title 22 of the California Code of Regulations.

(D) A complaint process established by the city with protocols that shall include a requirement that the contractor comply with all of the following:

(i) Post, in a visible location at all sites, the names and telephone numbers of the site director and city program contact to each participant's parents or guardian.

(ii) Provide to each participant's parents or guardian the names and telephone numbers specified in clause (i).

(E) A provision guaranteeing the city's timely investigation of accidents and complaints and providing for the immediate administrative leave of contracted employees pending the outcome of the investigation in cases relating to allegations involving a substantial threat to the health and safety of the children under the contractor's care. All parents shall be notified of the complaint process at the time of registration.

(9) All classrooms or portable classrooms utilized by the "6 to 6" program providing extended day care shall meet all standards applicable for use during the regular schoolday.

(c) The "6 to 6" program shall be planned through a neighborhood community collaborative partnership process that includes the city, school district, school administrators, government agencies, community organizations, parents, youth, and the private sector.

(d) In addition to the exemptions set forth in Section 1596.792, this chapter shall not apply to the "6 to 6" program if the contracting city ensures the program is operated in compliance with the requirements of this section.

(e) (1) The city shall secure the services of an independent entity to evaluate the "6 to 6" program. The Community Care Licensing Division of the department and the city shall agree upon the independent evaluator. The city shall bear the cost of the evaluation.

(2) The evaluation shall be conducted upon the completion of the pilot project and shall evaluate the health and safety of the

participants in the "6 to 6" program, with a particular focus on children ages five to eight years, inclusive.

(3) The evaluation shall include, but not be limited to, the health and safety of the children, information on staff to pupil ratio, site and program monitoring, and extent and progress of participation, tutoring, literacy, and homework assistance.

(4) The independent evaluator designated pursuant to paragraph (1) shall have experience in program evaluation, with a preference for expertise in children's programs. The independent evaluator shall not have any conflicts of interest with the independent evaluator's duties pursuant to this section.

(5) The results of the evaluation shall be forwarded to the Legislature.

(6) The city shall maintain any records necessary in order for the evaluation to be completed. The city shall compare the results of the evaluation to local community care licensing data.

(f) No charges or costs associated with the provision of care shall be imposed upon participants in the "6 to 6" program.

(g) 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 11170.6 is added to the Penal Code, to read:

11170.6. (a) Notwithstanding paragraph (3) of subdivision (b) of Section 11170, the Department of Justice shall make available to the City of San Diego for purposes of evaluating employees for the "6-to-6" program information regarding a known or suspected child abuser maintained in the child abuse index pursuant to subdivision (a) of Section 11170 concerning any person who has submitted an application for employment in the "6-to-6" program.

(b) The City of San Diego, to whom disclosure of any information pursuant to subdivision (a) is authorized, is responsible for obtaining the original investigative report from the reporting agency and for drawing independent conclusions regarding the quality of the evidence disclosed and the sufficiency of the evidence for making decisions when evaluating employees for the "6-to-6" program.

(c) The disclosure pursuant to this section of the presence of an applicant's name on the index is provided solely for purposes of investigating the individual's background by identifying the original investigative report from the reporting agency. The presence of an individual's name on the index may not itself be used as evidence adverse to an applicant for employment in the "6-to-6" program. An investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. Employment may not be denied based on a report from the Child Abuse Central Index, unless the child abuse is substantiated.

(d) (1) Whenever information contained in the Department of Justice files is furnished as the result of a request for information

pursuant to subdivision (a), the Department of Justice may charge the requestor a fee. The fee may 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. The fee may not exceed fifteen dollars ($15).

(2) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditures by the department to offset costs incurred for processing child abuse central index requests.

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 allow for the September 1999 establishment of the extended schoolday program, and to efficiently promote the public safety of children in day care and public recreation programs within San Diego County, it is necessary that this act take effect immediately.

CHAPTER 852

An act to amend Sections 832.3 and 12403.5 of the Penal Code, relating to peace officer training.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 832.3 of the Penal Code is amended to read:

832.3. (a) Except as provided in subdivision (e), any sheriff, undersheriff, or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1975, shall successfully complete a course of training prescribed by the Commission on Peace Officer Standards and Training before exercising the powers of a peace officer, except while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training. Each police chief, or any other person in charge of a local law enforcement agency, appointed on or after January 1, 1999, as a condition of continued employment, shall complete the course of training pursuant to this subdivision within two years of appointment. The training course for a sheriff, an undersheriff, and a deputy sheriff of

a county, and a police chief and a police officer of a city or any other local law enforcement agency, shall be the same.

(b) For the purpose of ensuring competent peace officers and standardizing the training required in subdivision (a), the commission shall develop a testing program, including standardized tests that enable (1) comparisons between presenters of the training and (2) assessments of trainee achievement. The trainees' test scores shall be used only for the purposes enumerated in this subdivision and those research purposes as shall be approved in advance by the commission. The commission shall take all steps necessary to maintain the confidentiality of the test scores, test items, scoring keys, and other examination data used in the testing program required by this subdivision. The commission shall determine the minimum passing score for each test and the conditions for retesting students who fail. Passing these tests shall be required for successful completion of the training required in subdivision (a). Presenters approved by the commission to provide the training required in subdivision (a) shall administer the standardized tests or, at the commission's option, shall facilitate the commission's administration of the standardized tests to all trainees.

(c) Notwithstanding subdivision (c) of Section 84500 of the Education Code and any regulations adopted pursuant thereto, community colleges may give preference in enrollment to employed law enforcement trainees who shall complete training as prescribed by this section. At least 15 percent of each presentation shall consist of nonlaw enforcement trainees if they are available. Preference should only be given when the trainee could not complete the course within the time required by statute, and only when no other training program is reasonably available. Average daily attendance for these courses shall be reported for state aid.

(d) Prior to July 1, 1987, the commission shall make a report to the Legislature on academy proficiency testing scores. This report shall include an evaluation of the correlation between academy proficiency test scores and performance as a peace officer.

(e) (1) Any deputy sheriff described in subdivision (c) of Section 830.1 shall be exempt from the training requirements specified in subdivisions (a) and (b) as long as his or her assignments remain custodial related.

(2) Deputy sheriffs described in subdivision (c) of Section 830.1 shall complete the training for peace officers pursuant to subdivision (a) of Section 832, and within 120 days after the date of employment, shall complete the training required by the Board of Corrections for custodial personnel pursuant to Section 6035, and the training required for custodial personnel of local detention facilities pursuant to Division 1 (commencing with Section 100) of Title 15 of the California Code of Regulations.

(3) Deputy sheriffs described in subdivision (c) of Section 830.1 shall complete the course of training pursuant to subdivision (a) prior

to being reassigned from custodial assignments to duties with responsibility for the prevention and detection of crime and the general enforcement of the criminal laws of this state.

(f) Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete a basic course of training as prescribed by subdivision (a) before exercising the powers of a peace officer. A school police officer shall not be subject to this subdivision while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training.

(g) The commission shall prepare a specialized course of instruction for the training of school peace officers, as defined in Section 830.32, to meet the unique safety needs of a school environment. This course is intended to supplement any other training requirements.

(h) Any school peace officer first employed by a K-12 public school district or California Community College district before July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) no later than July 1, 2002. Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) within two years of the date of first employment.

SEC. 2. Section 12403.5 of the Penal Code is amended to read:

12403.5. Notwithstanding any other provision of law, a person holding a license as a private investigator or private patrol operator issued pursuant to Chapter 11 (commencing with Section 7500), Division 3 of the Business and Professions Code, or uniformed patrolmen employees of a private patrol operator, may purchase, possess, or transport any tear gas weapon, if it is used solely for defensive purposes in the course of the activity for which the license was issued and if the person has satisfactorily completed a course of instruction approved by the Department of Consumer Affairs in the use of tear gas.

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 853

An act to amend Section 77 of the Code of Civil Procedure, to amend Section 51553 of the Education Code, to amend Sections 68660 and 68661 of the Government Code, to amend Section 11167 of the Health and Safety Code, to amend Section 1861.025 of the Insurance Code, to amend Sections 96.5, 148, 217.1, 261.5, 264, 636.5, 653t, 1203.073, and 12403.5 of, and to repeal Section 626.1 of, the Penal Code, to amend Section 23612 of the Vehicle Code, and to amend Section 30547 of the Water Code, relating to criminal law.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 77 of the Code of Civil Procedure is amended to read:

77. (a) In every county and city and county, there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds it necessary, four judges.

The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in this state.

The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.

(b) In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the division shall designate the three judges who shall participate.

(c) In addition to their other duties, the judges designated as members of the appellate division of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve in the appellate division of the superior court of a county other than the county in which that judge was elected or appointed as a superior court judge, or if the judge is retired, in a county other than the county in which the judge resides, the judge shall receive from the county to which the judge is designated expenses for travel, board, and lodging. If the judge is out of the judge's county overnight or longer, by reason of the designation, that judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amounts as are payable for those purposes to justices of the Supreme Court under the rules of the State Board of Control. In addition, a retired judge shall receive from the state and the county to which the judge is designated, for the time so

served, amounts equal to that which the judge would have received from each if the judge had been assigned to the superior court of the county.

(d) The concurrence of two judges of the appellate division of the superior court shall be necessary to render the decision in every case in, and to transact any other business except business that may be done at chambers by the presiding judge of, the division. The presiding judge shall convene the appellate division when necessary. The presiding judge shall also supervise its business and transact any business that may be done at chambers.

(e) The appellate division of the superior court has jurisdiction on appeal from the following courts, in all cases in which an appeal may be taken to the superior court or the appellate division of the superior court as provided by law, except where the appeal is a retrial in the superior court:

(1) The municipal courts within the county.

(2) The superior court in a county in which there is no municipal court.

(f) The powers of each appellate division shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the appellate division of the superior courts.

(g) The Judicial Council shall promulgate rules, not inconsistent with law, to promote the independence of, and govern the practice and procedure and the disposition of the business of the appellate division.

(h) Notwithstanding any other provision of law, the Chief Justice may designate any municipal court judge as a member of the appellate department of the superior court if the municipal court is participating in a trial court coordination plan approved by the Judicial Council and the designated municipal court judge has been assigned to the superior court of the county by the Chief Justice.

(i) A reference in any other statute to the appellate department of the superior court means the appellate division of the superior court.

(j) Notwithstanding the provisions of subdivisions (b) and (d), appeals from convictions of traffic infractions may be heard and decided by one judge of the appellate division of the superior court.

SEC. 1.5. Section 77 of the Code of Civil Procedure is amended to read:

77. (a) In every county and city and county, there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds it necessary, four judges.

The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a

judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in this state.

The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.

(b) In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the division shall designate the three judges who shall participate.

(c) In addition to their other duties, the judges designated as members of the appellate division of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve in the appellate division of the superior court of a county other than the county in which that judge was elected or appointed as a superior court judge, or if the judge is retired, in a county other than the county in which the judge resides, the judge shall receive from the county to which the judge is designated expenses for travel, board, and lodging. If the judge is out of the judge's county overnight or longer, by reason of the designation, that judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amounts as are payable for those purposes to justices of the Supreme Court under the rules of the State Board of Control. In addition, a retired judge shall receive from the state and the county to which the judge is designated, for the time so served, amounts equal to that which the judge would have received from each if the judge had been assigned to the superior court of the county.

(d) The concurrence of two judges of the appellate division of the superior court shall be necessary to render the decision in every case in, and to transact any other business except business that may be done at chambers by the presiding judge of, the division. The presiding judge shall convene the appellate division when necessary. The presiding judge shall also supervise its business and transact any business that may be done at chambers.

(e) The appellate division of the superior court has jurisdiction on appeal from the following courts, in all cases in which an appeal may be taken to the superior court or the appellate division of the superior court as provided by law, except where the appeal is a retrial in the superior court:

(1) The municipal courts within the county.

(2) The superior court in a county in which there is no municipal court.

(f) The powers of each appellate division shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the appellate division of the superior courts.

(g) The Judicial Council shall promulgate rules, not inconsistent with law, to promote the independence of, and govern the practice and procedure and the disposition of the business of the appellate division.

(h) Notwithstanding any other provision of law, the Chief Justice may designate any municipal court judge as a member of the appellate 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.

(j) Notwithstanding the provisions of subdivisions (b) and (d), appeals from convictions of traffic infractions may be heard and decided by one judge of the appellate division of the superior court.

SEC. 2. 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 satisfy the following criteria:

(1) Course material and instruction shall be age appropriate.

(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 intercourse 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 one's self 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.

Pupils also shall be taught that it is wrong to take advantage of, or to exploit, another person.

Course material and instruction given pursuant to this paragraph shall be age appropriate.

SEC. 2.5. 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 intercourse 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. 3. Section 68660 of the Government Code is amended to read:

68660. As used in this chapter, "center" means the California Habeas Corpus Resource Center, and "board" means the board of directors of the center.

SEC. 4. Section 68661 of the Government Code is amended to read:

68661. There is hereby created in the judicial branch of state government the California Habeas Corpus Resource Center, which shall have all of the following general powers and duties:

(a) To employ up to 30 attorneys who may be appointed by the Supreme Court to represent any person convicted and sentenced to death in this state, who is without counsel and who is determined by a court of competent jurisdiction to be indigent, for the purpose of instituting and prosecuting postconviction actions in the state and federal courts, challenging the legality of the judgment or sentence imposed against that person, and preparing petitions for executive clemency. Any such appointment may be concurrent with the appointment of the State Public Defender or other counsel for purposes of direct appeal under Section 11 of Article VI of the California Constitution.

(b) To seek reimbursement for representation and expenses pursuant to Section 3006A of Title 18 of the United States Code when providing representation to indigent persons in the federal courts and process those payments via the Federal Trust Fund.

(c) To work with the Supreme Court in recruiting members of the private bar to accept death penalty habeas case appointments.

(d) To establish and periodically update a roster of attorneys qualified as counsel in postconviction proceedings in capital cases.

(e) To establish and periodically update a roster of experienced investigators and experts who are qualified to assist counsel in postconviction proceedings in capital cases.

(f) To employ investigators and experts as staff to provide services to appointed counsel upon request of counsel, provided that where the provision of those services is to private counsel under appointment by the Supreme Court, those services shall be pursuant to contract between appointed counsel and the center.

(g) To provide legal or other advice or, to the extent not otherwise available, any other assistance to appointed counsel in postconviction proceedings as is appropriate where not prohibited by law.

(h) To develop a brief bank of pleadings and related materials on significant, recurring issues which arise in postconviction proceedings in capital cases and to make those briefs available to appointed counsel.

(i) To evaluate cases and recommend assignment by the court of appropriate attorneys.

(j) To provide assistance and case progress monitoring as needed.

(k) To timely review case billings and recommend compensation of members of the private bar to the court.

(*l*) The center shall annually report to the Legislature, the Governor, and the Supreme Court on the status of the appointment of counsel for indigent prisoners in postconviction capital cases, and on the operations of the office. On or before January 1, 2000, the office of the Legislative Analyst shall evaluate the available reports.

SEC. 5. Section 11167 of the Health and Safety Code is amended to read:

11167. Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to issue a prescription may result in loss of life or intense suffering, an order for a Schedule II controlled substance may be dispensed on an oral, written, or electronic data transmission order, subject to all of the following requirements:

(a) The order contains all information required by subdivision (a) of Section 11164.

(b) Any written order is signed and dated by the prescriber in indelible pencil or ink, and the pharmacy reduces any oral or electronic data transmission order to writing prior to actually dispensing the controlled substance.

(c) The prescriber provides a triplicate prescription, completed as provided by subdivision (a) of Section 11164, by the seventh day following the transmission of the initial order; a postmark by the seventh day following transmission of the initial order shall constitute compliance.

(d) If the prescriber fails to comply with subdivision (c), the pharmacy shall so notify the Bureau of Narcotic Enforcement in writing within 144 hours of the prescriber's failure to do so and shall make and retain a written, readily retrievable record of the prescription, including the date and method of notification of the Bureau of Narcotic Enforcement.

SEC. 6. Section 1861.025 of the Insurance Code is amended to read:

1861.025. A person is qualified to purchase a Good Driver Discount policy if he or she meets all of the following criteria:

(a) He or she has been licensed to drive a motor vehicle for the previous three years.

(b) During the previous three years, he or she has not done any of the following:

(1) Had more than one violation point count determined as provided by subdivision (a), (b), (c), (d), (e), (g), or (h) of Section 12810 of the Vehicle Code, but subject to the following modifications:

For the purposes of this section, the driver of a motor vehicle involved in an accident for which he or she was principally at fault that resulted only in damage to property shall receive one violation point count, in addition to any other violation points which may be imposed for this accident.

If, under Section 488 or 488.5, an insurer is prohibited from increasing the premium on a policy on account of a violation, that violation shall not be included in determining the point count of the person.

If a violation is required to be reported under Section 1816 of the Vehicle Code, or under Section 784 of the Welfare and Institutions Code, or any other provision requiring the reporting of a violation by a minor, the violation shall be included for the purposes of this section in determining the point count in the same manner as is applicable to adult violations.

(2) Had more than one dismissal pursuant to Section 1803.5 of the Vehicle Code that was not made confidential pursuant to Section 1808.7 of the Vehicle Code, in the 36-month period for violations that would have resulted in the imposition of more than one violation point count under paragraph (1) if the complaint had not been dismissed.

(3) Was the driver of a motor vehicle involved in an accident that resulted in bodily injury or in the death of any person and was principally at fault. The commissioner shall adopt regulations setting guidelines to be used by insurers for the determination of fault for the purposes of this paragraph and paragraph (1).

(c) During the previous seven years, he or she has not been convicted of a violation of Section 23140, 23152, or 23153 of the Vehicle Code, a felony violation of Section 23550 or 23566, or former Section 23175, as Section 23175 read on January 1, 1999, of the Vehicle Code, or a violation of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code.

(d) Any person who claims that he or she meets the criteria of subdivisions (a), (b), and (c) based entirely or partially on a driver's license and driving experience acquired anywhere other than in the United States or Canada is rebuttably presumed to be qualified to purchase a Good Driver Discount policy if he or she has been licensed to drive in the United States or Canada for at least the previous 18 months and meets the criteria of subdivisions (a), (b), and (c) for that period.

SEC. 7. Section 96.5 of the Penal Code is amended to read:

96.5. (a) Every judicial officer, court commissioner, or referee who commits any act that he or she knows perverts or obstructs justice, is guilty of a public offense punishable by imprisonment in a county jail for not more than one year.

(b) Nothing in this section prohibits prosecution under paragraph (5) of subdivision (a) of Section 182 of the Penal Code or any other law.

SEC. 8. Section 148 of the Penal Code is amended to read:

148. (a) (1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(2) Except as provided by subdivision (d) of Section 653t, every person who knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a public safety radio frequency shall be punished by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(b) Every person who, during the commission of any offense described in subdivision (a), removes or takes any weapon, other than a firearm, from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment in a county jail not to exceed one year or in the state prison.

(c) Every person who, during the commission of any offense described in subdivision (a), removes or takes a firearm from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment in the state prison.

(d) Except as provided in subdivision (c) and notwithstanding subdivision (a) of Section 489, every person who removes or takes without intent to permanently deprive, or who attempts to remove or take a firearm from the person of, or immediate presence of, a public officer or peace officer, while the officer is engaged in the performance of his or her lawful duties, shall be punished by imprisonment in a county jail not to exceed one year or in the state prison.

In order to prove a violation of this subdivision, the prosecution shall establish that the defendant had the specific intent to remove or take the firearm by demonstrating that any of the following direct, but ineffectual, acts occurred:

(1) The officer's holster strap was unfastened by the defendant.

(2) The firearm was partially removed from the officer's holster by the defendant.

(3) The firearm safety was released by the defendant.

(4) An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.

(5) An independent witness corroborates that the defendant actually had his or her hand on the firearm and tried to take the firearm away from the officer who was holding it.

(6) The defendant's fingerprint was found on the firearm or holster.

(7) Physical evidence authenticated by a scientifically verifiable procedure established that the defendant touched the firearm.

(8) In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.

(e) A person shall not be convicted of a violation of subdivision (a) in addition to a conviction of a violation of subdivision (b), (c), or (d) when the resistance, delay, or obstruction, and the removal or taking of the weapon or firearm or attempt thereof, was committed against the same public officer, peace officer, or emergency medical technician. A person may be convicted of multiple violations of this section if more than one public officer, peace officer, or emergency medical technician are victims.

(f) This section shall not apply if the public officer, peace officer, or emergency medical technician is disarmed while engaged in a criminal act.

SEC. 9. Section 217.1 of the Penal Code is amended to read:

217.1. (a) Except as provided in subdivision (b), every person who commits any assault upon the President or Vice President of the United States, the Governor of any state or territory, any justice, judge, or former judge of any local, state, or federal court of record, any commissioner, referee, or other subordinate judicial officer of any court of record, the secretary or director of any executive agency or department of the United States or any state or territory, or any other official of the United States or any state or territory holding elective office, any mayor, city council member, county supervisor, sheriff, district attorney, prosecutor or assistant prosecutor of any local, state, or federal prosecutor's office, a former prosecutor or assistant prosecutor of any local, state, or federal prosecutor's office, public defender or assistant public defender of any local, state, or federal public defender's office, a former public defender or assistant public defender of any local, state, or federal public defender's office, the chief of police of any municipal police department, any peace officer, any juror in any local, state, or federal court of record, or the immediate family of any of these officials, in retaliation for or to prevent the performance of the victim's official duties, shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison.

(b) Notwithstanding subdivision (a), every person who attempts to commit murder against any person listed in subdivision (a) in retaliation for or to prevent the performance of the victim's official duties, shall be confined in the state prison for a term of 15 years to life. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term

of 15 years in a state prison imposed pursuant to this section, but that person shall not otherwise be released on parole prior to such time.

(c) For the purposes of this section, the following words have the following meanings:

(1) "Immediate family" means spouse, child, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father, or stepfather.

(2) "Peace officer" means any person specified in subdivision (a) of Section 830.1 or Section 830.5.

SEC. 10. Section 261.5 of the Penal Code is amended to read:

261.5. (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for two, three, or four years.

(e) (1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars ($2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars ($5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars ($10,000).

(D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall

be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.

(3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 11. Section 264 of the Penal Code is amended to read:

264. (a) Rape, as defined in Section 261 or 262, is punishable by imprisonment in the state prison for three, six, or eight years.

(b) In addition to any punishment imposed under this section the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates Section 261 or 262 with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 12. Section 626.1 of the Penal Code is repealed.

SEC. 13. Section 636.5 of the Penal Code is amended to read:

636.5. Any person not authorized by the sender, who intercepts any public safety radio service communication, by use of a scanner or any other means, for the purpose of using that communication to assist in the commission of a criminal offense or to avoid or escape arrest, trial, conviction, or punishment or who divulges to any person he or she knows to be a suspect in the commission of any criminal offense, the existence, contents, substance, purport, effect or meaning of that communication concerning the offense with the intent that the suspect may avoid or escape from arrest, trial, conviction, or punishment is guilty of a misdemeanor.

Nothing in this section shall preclude prosecution of any person under Section 31 or 32.

As used in this section, "public safety radio service communication" means a communication authorized by the Federal Communications Commission to be transmitted by a station in the public safety radio service.

SEC. 14. Section 653t of the Penal Code is amended to read:

653t. (a) A person commits a public offense if the person knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over an amateur or a citizen's band radio frequency, the purpose of which communication is to inform or inquire about an emergency.

(b) For purposes of this section, "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury, in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of extensive damage or destruction, or in which that injury or destruction has occurred and the person transmitting is attempting to summon assistance.

(c) A violation of subdivision (a) is a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000), by imprisonment in a county jail not to exceed six months, or by both, unless, as a result of the commission of the offense, serious bodily injury or property loss in excess of ten thousand dollars ($10,000) occurs, in which event the offense is a felony.

(d) Any person who knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of an emergency communication over a public safety radio frequency, when the offense results in serious bodily injury or property loss in excess of ten thousand dollars (10,000), is guilty of a felony.

SEC. 15. Section 1203.073 of the Penal Code is amended to read:

1203.073. (a) A person convicted of a felony specified in subdivision (b) may be granted probation only in an unusual case where the interests of justice would best be served. When probation is granted in such a case, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(b) Except as provided in subdivision (a), probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

(1) Any person who is convicted of violating Section 11351 of the Health and Safety Code by possessing for sale, or Section 11352 of the Health and Safety Code by selling, a substance containing 28.5 grams or more of cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of the Health and Safety Code, or 57 grams or more of a substance containing cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of the Health and Safety Code.

(2) Any person who is convicted of violating Section 11378 of the Health and Safety Code by possessing for sale, or Section 11379 of the Health and Safety Code by selling a substance containing 28.5 grams or more of methamphetamine or 57 grams or more of a substance containing methamphetamine.

(3) Any person who is convicted of violating subdivision (a) of Section 11379.6 of the Health and Safety Code, except those who manufacture phencyclidine, or who is convicted of an act which is punishable under subdivision (b) of Section 11379.6 of the Health and Safety Code, except those who offer to perform an act which aids in the manufacture of phencyclidine.

(4) Except as otherwise provided in Section 1203.07, any person who is convicted of violating Section 11353 or 11380 of the Health and Safety Code by using, soliciting, inducing, encouraging, or intimidating a minor to manufacture, compound, or sell heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of the Health and Safety Code, or methamphetamine.

(5) Any person who is convicted of violating Section 11351.5 of the Health and Safety Code by possessing for sale a substance containing 14.25 grams or more of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code or 57 grams or more of a substance containing at least five grams of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code.

(6) Any person who is convicted of violating Section 11352 of the Health and Safety Code by transporting for sale, importing for sale, or administering, or by offering to transport for sale, import for sale, or administer, or by attempting to import for sale or transport for sale, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code.

(7) Any person who is convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code.

(8) Any person convicted of violating Section 11379.6, 11382, or 11383 of the Health and Safety Code with respect to methamphetamine, if he or she has one or more prior convictions for a violation of Section 11378, 11379, 11379.6, 11380, 11382, or 11383 with respect to methamphetamine.

(c) As used in this section, the term "manufacture" refers to the act of any person who manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis.

(d) The existence of any previous conviction or fact which would make a person ineligible for probation under this section shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 16. Section 12403.5 of the Penal Code is amended to read:

12403.5. Notwithstanding any other provision of law, a person holding a license as a private investigator or private patrol operator issued pursuant to Chapter 11 (commencing with Section 7500), Division 3 of the Business and Professions Code, or uniformed patrolmen employees of a private patrol operator, may purchase,

possess, or transport any tear gas weapon, if it is used solely for defensive purposes in the course of the activity for which the license was issued and if the person has satisfactorily completed a course of instruction approved by the Department of Consumer Affairs, Bureau of Security and Investigative Services, in the use of tear gas.

SEC. 17. Section 23612 of the Vehicle Code is amended to read:

23612. (a) (1) (A) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23140, 23152, or 23153. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23140, 23152, or 23153.

(C) The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(D) The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153, and (i) the suspension of the person's privilege to operate a motor vehicle for a period of one year, (ii) the revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within seven years of a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code which resulted in a conviction, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 for an offense which occurred on a separate occasion, or (iii) the revocation of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, which resulted in convictions, or if the person's privilege to operate a motor vehicle has been suspended or revoked two or more times pursuant to Section 13353, 13353.1, or 13353.2 for offenses which occurred on separate occasions, or if there is any combination of those convictions or administrative suspensions or revocations.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of

whether the test shall be of his or her blood or breath and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) If the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice.

(C) A person who chooses to submit to a breath test may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person has the choice of submitting to and completing a blood or urine test, and the officer shall advise the person that he or she is required to submit to an additional test and that he or she may choose a test of either blood or urine. If the person arrested either is incapable, or states that he or she is incapable, of completing either chosen test, the person shall submit to and complete the other remaining test.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of those tests which are available at the facility to which that person has been transported. In that case, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The officer shall also advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension or revocation of his or her privilege to operate a motor vehicle. Any person who is dead is deemed not to have withdrawn his or her

consent and a test or tests may be administered at the direction of a peace officer.

(b) Any person who is afflicted with hemophilia is exempt from the blood test required by this section.

(c) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon is exempt from the blood test required by this section.

(d) (1) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood or breath for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(2) If a blood or breath test is not available under subparagraph (A) of paragraph (1) of subdivision (a), or under subparagraph (A) of paragraph (2) of subdivision (a), or under paragraph (1) of this subdivision, the person shall submit to the remaining test in order to determine the percent, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.

(e) If the person, who has been arrested for a violation of Section 23140, 23152, or 23153, refuses or fails to complete a chemical test or tests, or requests that a blood or urine test be taken, the peace officer, acting on behalf of the department, shall serve the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person. The notice shall be on a form provided by the department.

(f) If the peace officer serves the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle, the peace officer shall take possession of any driver's license issued by this state which is held by the person. The temporary driver's license shall be an endorsement on the notice of the order of suspension and shall be valid for 30 days from the date of arrest.

(g) The peace officer shall immediately forward a copy of the completed notice of suspension or revocation form and any driver's license taken into possession under subdivision (f), with the report required by Section 13380, to the department. If the person submitted to a blood or urine test, the peace officer shall forward the results immediately to the appropriate forensic laboratory. The forensic laboratory shall forward the results of the chemical tests to the department within 15 calendar days of the date of the arrest.

(h) A preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of Section 23140, 23152, or 23153 is a field

sobriety test and may be used by an officer as a further investigative tool.

(i) If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a blood, breath, or urine test, as required by this section, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

SEC. 18. Section 30547 of the Water Code is amended to read:

30547. (a) A district may employ a suitable security force. The employees of the district that are designated by the general manager as security officers shall have the authority and powers conferred by Section 830.34 of the Penal Code upon peace officers. The district shall adhere to the standards for recruitment and training of peace officers established by the Commission on Peace Officers Standards and Training pursuant to Title 4 (commencing with Section 13500) of Part 4 of the Penal Code.

(b) Every security officer employed by a district shall conform to the standards for peace officers of the Commission on Peace Officers Standards and Training. Any officer who fails to conform to those standards shall not have the powers of a peace officer.

SEC. 19. 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 any one or more of Sections 3 to 18, inclusive, of this act shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 1999 calendar year and takes effect on or before January 1, 2000, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

SEC. 20. Section 1.5 of this bill incorporates amendments to Section 77 of the Code of Civil Procedure proposed by both this bill and SB 210. 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 77 of the Code of Civil Procedure, and (3) this bill is enacted after SB 210, in which case Section 1 of this bill shall not become operative.

SEC. 21. Section 2.5 of this bill incorporates amendments to Section 51553 of the Education Code proposed by both this bill and AB 246. 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 51553 of the Education Code, and (3) this bill is enacted after AB 246, in which case Section 2 of this bill shall not become operative.

SEC. 22. 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 854

An act to amend Sections 20001 and 23612 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 20001 of the Vehicle Code is amended to read:

20001. (a) The driver of any vehicle involved in an accident resulting in injury to any person, other than himself or herself, or in the death of any person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004.

(b) (1) Except as provided in paragraph (2), any person who violates subdivision (a) shall be punished by imprisonment in the state prison, or 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 imprisonment and fine.

(2) If the accident described in subdivision (a) results in death or permanent, serious injury, any person who violates subdivision (a) shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor 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 imprisonment and fine. However, the court, in the interests of justice and for reasons stated in the record, may reduce or eliminate the minimum imprisonment required by this paragraph.

(3) 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 interests of justice and for reasons stated in the record, may reduce the amount of that minimum fine to less than the amount otherwise required by this subdivision.

(c) A person who flees the scene of the crime after committing a violation of Section 191.5 of, paragraph (1) or (3) of subdivision (c) of Section 192 of, or subdivision (a) or (c) of Section 192.5 of, the Penal Code, upon conviction of any of those sections, in addition and consecutive to the punishment prescribed, shall be punished by an additional term of imprisonment of five years in the state prison. This additional term shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. The court shall not strike a finding that brings a person within the provisions of this subdivision or an allegation made pursuant to this subdivision.

(d) As used in this section, "permanent, serious injury" means the loss or permanent impairment of function of any bodily member or organ.

SEC. 2. Section 23612 of the Vehicle Code is amended to read:

23612. (a) (1) (A) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23140, 23152, or 23153. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23140, 23152, or 23153.

(C) The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(D) The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153, and (i) the suspension of the person's privilege to operate a motor vehicle for a period of one year, (ii) the revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within seven years of a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code that resulted in a conviction, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 for an offense that occurred on a separate occasion, or (iii) the revocation of the person's privilege to operate a motor

vehicle for a period of three years if the refusal occurs within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, that resulted in convictions, or if the person's privilege to operate a motor vehicle has been suspended or revoked two or more times pursuant to Section 13353, 13353.1, or 13353.2 for offenses that occurred on separate occasions, or if there is any combination of those convictions or administrative suspensions or revocations.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood or breath and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) If the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice.

(C) A person who chooses to submit to a breath test may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person has the choice of submitting to and completing a blood or urine test, and the officer shall advise the person that he or she is required to submit to an additional test and that he or she may choose a test of either blood or urine. If the person arrested either is incapable, or states that he or she is incapable, of completing either chosen test, the person shall submit to and complete the other remaining test.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of those tests that are available at the facility to which that person has been transported. In that case, the officer shall advise the person of those tests that are available at the medical facility and that the person's choice is limited to those tests that are available.

(4) The officer shall also advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension or revocation of his or her privilege to operate a motor vehicle. Any person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of a peace officer.

(b) Any person who is afflicted with hemophilia is exempt from the blood test required by this section.

(c) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon is exempt from the blood test required by this section.

(d) (1) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood or breath for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(2) If a blood or breath test is not available under subparagraph (A) of paragraph (1) of subdivision (a), or under subparagraph (A) of paragraph (2) of subdivision (a), or under paragraph (1) of this subdivision, the person shall submit to the remaining test in order to determine the percent, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.

(e) If the person, who has been arrested for a violation of Section 23140, 23152, or 23153, refuses or fails to complete a chemical test or tests, or requests that a blood or urine test be taken, the peace officer, acting on behalf of the department, shall serve the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person. The notice shall be on a form provided by the department.

(f) If the peace officer serves the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle, the peace officer shall take possession of any driver's license issued by this state which is held by the person. The temporary driver's license shall be an endorsement on the notice of the order of suspension and shall be valid for 30 days from the date of arrest.

(g) (1) The peace officer shall immediately forward a copy of the completed notice of suspension or revocation form and any driver's license taken into possession under subdivision (f), with the report required by Section 23158.2, to the department. If the person submitted to a blood or urine test, the peace officer shall forward the results immediately to the appropriate forensic laboratory. The forensic laboratory shall forward the results of the chemical tests to the department within 15 calendar days of the date of the arrest.

(2) (A) Notwithstanding any other provision of law, any document containing data prepared and maintained in the governmental forensic laboratory computerized data base system that is electronically transmitted or retrieved through public or private computer networks to or by the department is the best available evidence of the chemical test results in all administrative proceedings conducted by the department. In order to be admissible as evidence in administrative proceedings, a document described in this subparagraph shall bear a certification by the employee of the department who retrieved the document certifying that the information was received or retrieved directly from the computerized data base system of a governmental forensic laboratory and that the document accurately reflects the data received or retrieved.

(B) Notwithstanding any other provision of law, the failure of an employee of the department to certify under subparagraph (A) is not a public offense.

(h) A preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of Section 23140, 23152, or 23153 is a field sobriety test and may be used by an officer as a further investigative tool.

(i) If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a blood, breath, or urine test, as required by this section, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

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:

The Department of Justice is implementing a system that electronically transmits forensic blood alcohol laboratory test results

to local law enforcement and state agencies. The Department of Motor Vehicles may be precluded under current law from using electronic reports when conducting administrative hearings for driving-under-the-influence violations.

In order to avoid the possibility that the Department of Motor Vehicles may not be able to apply appropriate sanctions to the driving privileges of all persons who exceed the legal blood-alcohol limits while operating motor vehicles at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 855

An act to amend Sections 83113 and 84200.5 of, and to add Section 86109.5 to, the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 83113 of the Government Code is amended to read:

83113. The commission shall, in addition to its other duties, do all of the following:

(a) Prescribe forms for reports, statements, notices and other documents required by this title.

(b) Prepare and publish manuals and instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with and enforcement of this title, and explaining the duties of persons and committees under this title.

(c) Provide assistance to agencies and public officials in administering the provisions of this title.

(d) Maintain a central file of local campaign contribution and expenditure ordinances forwarded to it by local government agencies.

(e) Annually publish a booklet not later than March 1 that sets forth the provisions of this title and includes other information the commission deems pertinent to the interpretation and enforcement of this title. The commission shall provide a reasonable number of copies of the booklet at no charge for the use of governmental agencies and subdivisions thereof that request copies of the booklet. The commission may charge a fee, not to exceed the prorated cost of producing the booklet, for providing copies of the booklet to other persons and organizations.

SEC. 2. 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 in the statewide direct primary election or the statewide general election, their controlled committees, and committees primarily formed to support or oppose an elected state officer or a state candidate being voted upon, shall file the applicable preelection statements specified in Section 84200.7 or 84200.8. All elected state officers who, during the applicable reporting periods covered by Section 84200.7 or 84200.8, contribute to any committee required to report receipts, expenditures, or contributions pursuant to this title, or make an independent expenditure, shall file the applicable preelection statements specified in Section 84200.7 or 84200.8. 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. 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 in the statewide direct primary election or the statewide general election, their controlled committees, and committees primarily formed to support or oppose an elected state officer or a state candidate being voted upon, shall file the applicable preelection statements specified in Section 84200.7 or 84200.8. All elected state officers who, during the applicable reporting periods covered by Section 84200.7 or 84200.8, contribute to any committee required to report receipts, expenditures, or contributions pursuant to this title, or make an independent expenditure, shall file the applicable preelection statements specified in Section 84200.7 or 84200.8. 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, or receives contributions totaling one thousand dollars ($1,000) 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, or receives contributions totaling one thousand dollars ($1,000) 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. Section 86109.5 is added to the Government Code, to read:

86109.5. (a) The Secretary of State shall establish and maintain on the Internet an online version of the Directory of Lobbyists, Lobbying Firms, and Lobbyist Employers. The Secretary of State shall update the directory weekly.

(b) The Secretary of State shall also display on the Internet a list of the specific changes made to the Directory of Lobbyist, Lobbying Firms, and Lobbying Employers, including new registrations and listings, additions, deletions, and other revisions, during the seven days preceding the update required by subdivision (a).

(c) This section may not be implemented until July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99.

(d) Notwithstanding any other provision of this title, the lobbying data made available on the Internet shall include the street name and building number of the persons or entity representatives listed on all the documents submitted to the Secretary of State pursuant to Chapter 6 (commencing with Section 86100).

SEC. 5. Section 3 of this bill incorporates amendments to Section 84200.5 of the Government Code proposed by this bill and SB 762. 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 84200.5 of the Government Code, and (3) this bill is enacted after SB 762, in which case Section 84200.5 of the Government Code, as amended by SB 762, shall remain operative only until the operative date of this bill, at which time Section 3 of this bill shall become operative, and Section 2 of this bill shall not become operative.

SEC. 6. 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 856

An act to amend Section 651 of the Business and Professions Code, relating to healing arts.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated, any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim which does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (1) shall be comparable in presentation

so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (2) shall contain a statement that the same "before" and "after" results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices" or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields. For the purposes of this section, the statement of a practitioner licensed under Chapter 4 (commencing with Section 1600) who limits his or her practice to a specific field or fields, shall only include a statement that he or she is certified or is eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board. A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but may only include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicants' education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) of this section or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by business or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that

would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

SEC. 2. Section 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated, any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (1) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (2) shall contain a statement that the same "before" and "after" results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices" or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that

is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields. For the purposes of this section, the statement of a practitioner licensed under Chapter 4 (commencing with Section 1600) who limits his or her practice to a specific field or fields, shall only include a statement that he or she is certified or is eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board. A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4

(commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician or surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board

certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) of this section or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by business or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

(k) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars ($10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

SEC. 3. Section 2 of this bill incorporates amendments to Section 651 of the Business and Professions Code proposed by both this bill and SB 450. 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 651 of the Business and Professions Code, and (3) this

bill is enacted after SB 450, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 857

An act to amend Section 17071.10 of the Education Code, relating to school facilities.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 17071.10 of the Education Code is amended to read:

17071.10. (a) The calculation determined by this article shall be made on a one-time basis and will be used as the baseline for eligibility determinations pursuant to this chapter.

(b) Each school district that elects to participate in the new construction program pursuant to this chapter shall submit to the board a one-time report of existing school building capacity.

(c) Notwithstanding subdivisions (a) and (b), a school district newly formed or reorganized pursuant to an election that occurred on or after November 4, 1998, may calculate its existing school building capacity pursuant to regulations adopted by the State Allocation Board.

SEC. 2. In calculating the existing school building capacity of the Tracy Joint Unified School District pursuant to this article, the number of pupils housed by grade level at the Delta Island Elementary School shall be deemed to be the number of pupils enrolled at that school at the time of determining the existing school building capacity of the Tracy Joint Unified School District.

SEC. 3. In calculating the ongoing eligibility for new construction funding of the Tracy Joint Unified School District pursuant to this article the number of pupils housed by grade level at the Delta Island Elementary School shall be deemed to be the number of pupils enrolled at that school at the time of determining the ongoing eligibility for new construction of the Tracy Joint Unified School

District, but that number may never exceed the assumed capacity calculated for the Delta Island School pursuant to Section 17071.25.

SEC. 4. The Legislature finds and declares that, for Sections 2 and 3 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 circumstance concerning the annexation of the Delta Island Union Elementary School District by the Tracy Joint Unified School District. The facts constituting the special circumstances are these:

The Delta Island Union Elementary School District is located in the rural agricultural part of San Joaquin County. The Delta Island Union Elementary School District which consists of the Delta Island Elementary School is adjacent to the Tracy Joint Unified School District and is in the process of being annexed to the Tracy Joint Unified School District, the only unified school district in close proximity to the Delta Island Elementary School. The Delta Island Union Elementary School District has less enrollment than it has building capacity. Once the Delta Island Elementary School District is annexed to the Tracy Joint Unified School District, the Delta Island Elementary School's excess capacity will be charged against the Tracy Joint Unified School District when it applies for new school facility construction funding from the state although it had no responsibility for creating the excess capacity and it would be a hardship to assign pupils residing in other parts of the Tracy Joint Unified School District to attend the more remote Delta Island Elementary School. Therefore, it is the intent of the Legislature that the Tracy Joint Unified School District not be penalized for the excess capacity at the Delta Island Elementary School when it applies for new school facility construction funding from the state.

CHAPTER 858

An act to amend Sections 15340, 17009.5, 17070.15, 17070.75, 17071.10, 17071.25, 17071.75, 17072.10, 17072.20, 17074.10, 17076.10, and 100420 of, to add Section 17072.17 to, and to repeal Section 15341 of, the Education Code, to amend Section 1003 of the Elections Code, and to amend Sections 65995.5 and 65995.6 of the Government Code, relating to school facilities.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 15340 of the Education Code is amended to read:

15340. (a) After adopting the resolution ordering the formation of the school facilities improvement district, the governing board may provide for and call a special bond election within the school facilities improvement district to, or may at the next statewide election, submit to the voters of the school facilities improvement district a proposition of whether or not an indebtedness of the district shall be incurred and bonds issued therefor in an amount not exceeding the estimate stated in the resolution ordering the school facilities improvement district formed. Notwithstanding any other provision of law, any special election called pursuant to this section may be called for any date except as set forth in Section 1100 of the Elections Code.

(b) The indebtedness and the bonds shall be payable from taxes to be levied and collected upon lands located within the school facilities improvement district.

SEC. 2. Section 15341 of the Education Code is repealed.

SEC. 3. Section 17009.5 of the Education Code is amended to read:

17009.5. (a) On and after November 4, 1998, the board shall only approve and fund school facilities construction projects pursuant to Chapter 12.5 (commencing with Section 17070.10).

(b) A school district with a first priority project that has received a construction approval by the Department of General Services, Division of the State Architect, or a joint-use project approval by the board, prior to November 4, 1998, for growth or modernization pursuant to this chapter shall receive funding pursuant to this chapter for all unfunded approved project costs as it would have received under this chapter, and the increased capacity assigned to the project shall be included in calculating the district's capacity pursuant to Chapter 12.5 (commencing with Section 17070.10). Funds received for projects described in this subdivision shall constitute the state's final and full contribution to these projects. The board shall not consider additional project funding except when otherwise authorized under Chapter 12.5 (commencing with Section 17070.10).

(c) A school district with a second priority project that has received a construction approval by the Department of General Services, Division of the State Architect prior to November 4, 1998, for growth or modernization pursuant to this chapter shall elect to do either of the following:

(1) Withdraw the application under this chapter, submit an initial report and application pursuant to Chapter 12.5 (commencing with Section 17070.10), and receive per pupil allocations as set forth in Chapter 12.5 (commencing with Section 17070.10). If the district withdraws the application, any funds previously allocated under this chapter for the project shall be offset from the first grant to the district under Chapter 12.5 (commencing with Section 17070.10).

(2) Convert the second priority project approved under this chapter to a first priority status and receive funds in accordance with this chapter.

(d) Notwithstanding priorities established pursuant to Chapter 12.5 (commencing with Section 17070.10), projects authorized for funding as set forth in this section shall be funded by the board pursuant to this chapter prior to funding other projects pursuant to Chapter 12.5 (commencing with Section 17070.10).

(e) For purposes of funding priority for modernization grants under Chapter 12.5 (commencing with Section 17070.10), a district that applies under subdivision (b) or paragraph (1) of subdivision (c) shall retain its original project approval date.

(f) Notwithstanding Section 17017.1, West Contra Costa Unified School District shall be eligible for state facilities funds beginning November 4, 1998.

(g) The State Allocation Board shall adopt regulations to ensure that an appropriate offset is made from funds approved pursuant to this chapter, for funds awarded to school districts pursuant to Chapter 12 (commencing with Section 17000) prior to November 4, 1998.

SEC. 4. Section 17070.15 of the Education Code is amended to read:

17070.15. The following terms, wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Apportionment" means a reservation of funds for the purpose of eligible new construction, modernization, or hardship approved by the board for an applicant school district.

(b) "Attendance area" means the geographical area serving an existing or proposed high school and those junior high schools and elementary schools included therein.

(c) "Board" means the State Allocation Board as established by Section 15490 of the Government Code.

(d) "Department" means the Department of General Services.

(e) "Committee" means the State School Building Finance Committee established pursuant to Section 15909.

(f) "Modernization" means any modification of a permanent structure that is at least 25 years old, or in the case of a portable classroom, that is at least 20 years old, that will enhance the ability of the structure to achieve educational purposes.

(g) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

(h) "School district" means a school district or a county office of education. For purposes of determining eligibility under this chapter, "school district" may also mean a high school attendance area.

(i) "Fund" means the 1998 State School Facilities Fund established pursuant to Section 17070.40.

(j) "County fund" means a county school facilities fund established pursuant to Section 17070.43.

(k) "Portable classroom" means a classroom building of one or more stories that is designed and constructed to be relocatable and transportable over public streets, and with respect to a single story portable classroom, is designed and constructed for relocation without the separation of the roof or floor from the building and when measured at the most exterior walls, has a floor area not in excess of 2,000 square feet.

(*l*) "School building capacity" means the capacity of a school building to house pupils.

SEC. 5. Section 17070.75 of the Education Code is amended to read:

17070.75. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and to encourage school districts to maintain all buildings under their control, the board shall require an applicant school district to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the school district's general fund for the exclusive purpose of providing moneys for ongoing and major maintenance of school buildings, according the highest priority to funding for the purposes set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for 20 years after receipt of funds under this chapter, a minimum amount equal to or greater than 3 percent of the applicant school district's general fund budget for that fiscal year. For the 1998–99 fiscal year and the 1999–2000 fiscal year, a school district may phase in this requirement by agreeing to certify the deposit of no less than 2 percent for the 1998–99 fiscal year and no less than $2^1/_2$ percent for the 1999–2000 fiscal year. Annual deposits to the fund established pursuant to paragraph (1) in excess of $2^1/_2$ percent of the district general fund budget may count towards the district's matching funds requirement necessary to receive apportionments from the State School Deferred Maintenance Fund pursuant to Section 39619 to the extent that funds are used for purposes that qualify for funding under that section. In addition, any district contribution to this fund may be provided in lieu of meeting the ongoing maintenance requirements pursuant to Section 17014 to the extent the funds are used for purposes established in that section. This paragraph is applicable only to the following school districts:

(A) High school districts with an average daily attendance greater than 300 pupils.

(B) Elementary school districts with an average daily attendance greater than 900 pupils.

(C) Unified school districts with an average daily attendance greater than 1,200 pupils.

(3) Certify that it has publicly approved an ongoing and major maintenance plan that outlines the use of the funds deposited, or to be deposited, pursuant to paragraph (2). The plan may provide that the district need not expend all of its annual allocation for ongoing and major maintenance in the year in which it is deposited if the cost of major maintenance requires that the allocation be carried over into another fiscal year. However, any state funds carried over into a subsequent year shall not be counted toward the annual minimum contribution by the district. A plan developed in compliance with this section shall be deemed to meet the requirements of Section 17585.

(c) A district to which paragraph (2) of subdivision (b) does not apply shall certify to the board that it can reasonably maintain its facilities with a lesser level of maintenance.

(d) For the purposes of calculating a county office of education requirement pursuant to this section, the 3 percent maintenance requirement shall be calculated based upon the county office of education general fund less any restricted accounts.

SEC. 6. Section 17071.10 of the Education Code is amended to read:

17071.10. (a) The calculation determined by this article shall be made on a one-time basis, and will be used as the baseline for eligibility determinations pursuant to this chapter.

(b) Each school district that elects to participate in the new construction program pursuant to this chapter shall submit to the board a one-time report of existing school building capacity.

(c) Notwithstanding subdivisions (a) and (b), a school district newly formed , reorganized, or affected by reorganization, pursuant to an election that occurred on or after November 4, 1998, shall calculate or recalculate its existing school building capacity pursuant to regulations adopted by the State Allocation Board.

SEC. 7. Section 17071.25 of the Education Code is amended to read:

17071.25. (a) The existing school building capacity in the applicant school district or, where appropriate, in the attendance area, at the time of initial application shall be calculated pursuant to the following formula:

(1) Identify by grade level all permanent teaching stations existing in the school district or, where appropriate, the attendance area. For the purposes of this section, ''teaching station'' means any space that was constructed or reconstructed to serve as an area in which to provide pupil instruction, but shall not include portable buildings, except as provided in Section 17071.30.

(2) (A) The assumed capacity of each calculated teaching station pursuant to paragraph (1) shall be 25 pupils for each teaching station

used for kindergarten or for grades 1 to 6, inclusive, and 27 pupils for each teaching station used for grades 7 to 12, inclusive.

(B) On or after January 1, 2000, the board may adopt or amend regulations adjusting the assumed capacity set forth in this subparagraph as appropriate for each teaching station used for nonsevere or severe special day class purposes after considering the recommendations of the Legislative Analyst pursuant to Section 17072.15. These special day class capacity adjustments and any adjustment of existing school capacity related to changes in the assumed capacity of special day class teaching stations shall be approved by the Director of Finance prior to implementation.

(C) On or after January 1, 2001, the board may adopt regulations establishing assumed capacity standards after consideration of the recommendations developed by the Director of General Services for continuation high school, community day school, county community school, and county community day school, teaching stations pursuant to Section 17072.17. Teaching station assumed capacity adjustments pursuant to these regulations and any other adjustments of existing school capacity related to changes in the assumed capacity of continuation high school, community day school, county community school, and county community day school, teaching stations shall be approved by the Director of Finance prior to implementation.

(3) Multiply the assumed capacity of each teaching station as specified in paragraph (2) by the number of teaching stations calculated under paragraph (1).

(4) The result of this computation shall be the number of pupils housed by grade level in the existing school building capacity of the applicant school district.

(b) The existing school building capacity of the applicant school district calculated under this section shall not include, in any school operated on a year-round schedule, any teaching station that has been in continuous use during the preceding five-year period primarily for the operation of a preschool program or programs.

SEC. 8. Section 17071.75 of the Education Code is amended to read:

17071.75. After a one-time initial report of existing school building capacity has been completed, a school district's ongoing eligibility for new construction funding shall be determined by making all of the following calculations:

(a) Each school district that applies to receive funding for new construction shall calculate enrollment projections for the fifth year beyond the fiscal year in which the application is made. Projected enrollment shall be determined by utilizing the cohort survival enrollment projection system, as defined and approved by the board. The board may supplement the cohort survival enrollment projection by the number of unhoused pupils that are anticipated as a result of dwelling units proposed pursuant to approved and valid tentative subdivision maps.

(b) Add the number of pupils that may be adequately housed in the existing school building capacity of the applicant district as determined pursuant to Article 2 (commencing with Section 17071.10) to the number of pupils for which facilities were provided from any state or local funding source after the existing school building capacity was determined pursuant to Article 2 (commencing with Section 17071.10). For this purpose, the total number of pupils for which facilities were provided shall be determined using the pupil loading formula set forth in Section 17071.25.

(c) Subtract the number of pupils pursuant to subdivision (b) from the number of pupils determined pursuant to subdivision (a).

(d) The calculations required to establish eligibility under this article shall result in a distinction between the number of existing unhoused pupils and the number of projected unhoused pupils.

(e) Apply the increase or decrease resulting from the difference between the most recent report made pursuant to Section 42268, and the report used in determining the school district's baseline capacity pursuant to subdivision (a) of Section 17071.25.

SEC. 9. Section 17072.10 of the Education Code is amended to read:

17072.10. (a) The board shall determine the applicant's maximum total new construction grant eligibility by multiplying the number of unhoused pupils calculated pursuant to Article 3 (commencing with Section 17071.75) in each school district with an approved application for new construction, by the per-unhoused-pupil grant as follows:

(1) Five thousand two hundred dollars ($5,200) for elementary school pupils.

(2) Five thousand five hundred dollars ($5,500) for middle school pupils.

(3) Seven thousand two hundred dollars ($7,200) for high school pupils.

(b) The board shall annually adjust the per-unhoused-pupil apportionment to reflect construction cost changes, as set forth in the statewide cost index for class B construction as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) The board may establish a single supplemental per-unhoused-pupil grant in addition to the amounts specified in subdivision (a) based on the statewide average marginal difference in costs in instances where a project requires multilevel school facilities due to limited acreage. The district's application shall demonstrate that a practical alternative site is not available.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to seven thousand five hundred dollars ($7,500) for any new construction project assistance. The amount of the supplemental apportionment authorized pursuant to this subdivision shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction. This subdivision shall be operative only until January 1, 2003.

SEC. 10. Section 17072.17 is added to the Education Code, to read:

17072.17. In conjunction with the State Department of Education, the Department of Finance, and the Legislative Analyst, the Department of General Services shall review the method of funding the construction and modernization of school facilities for continuation high school, community day school, county community school, and county community day school, teaching stations pursuant to Sections 17072.10 and 17074.10. Pursuant to this review, the Director of General Services shall, by September 1, 2000, recommend modifications to this method that he or she deems to be advisable.

SEC. 11. Section 17072.20 of the Education Code is amended to read:

17072.20. (a) An applicant school district that has been determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) or Article 3 (commencing with Section 17071.75) may submit at any time a request to the board for a project apportionment for all or a portion of the funding for which the school district is eligible.

(b) The application shall include, but shall not be limited to, the school district's determination of the amount of state funding that the district is otherwise eligible for relating to site acquisition, site development, new construction, and hardship funding provided pursuant to Article 8 (commencing with Section 17075.10), if any. The amount shall be reduced by the amount of the alternative fee collected pursuant to subdivision (a) of Section 65995.7 of the Government Code if a reimbursement election or agreement pursuant to Section 65995.7 of the Government Code is not in effect.

(c) The board shall verify and adjust, as necessary, and approve the district's application.

(d) Unless otherwise requested by an applicant school district, or unless the school district's eligibility is reduced because of an increase in the existing school building capacity as calculated pursuant to subdivision (b) of Section 17071.75, the eligibility for funding determined pursuant to this section shall be effective for a period of three years for school districts having an enrollment of 2,500 or less for the prior fiscal year.

SEC. 12. Section 17074.10 of the Education Code is amended to read:

17074.10. (a) The board shall determine the total funding eligibility of a school district for modernization funding by multiplying the following amounts by each pupil of that grade level housed in permanent school buildings that are at least 25 years old or portable classrooms that are at least 20 years old, and that have not been previously modernized with state funding:

(1) Two thousand two hundred forty-six dollars ($2,246) for each elementary pupil.

(2) Two thousand three hundred seventy-six dollars ($2,376) for each middle school pupil.

(3) Three thousand one hundred ten dollars ($3,110) for each high school pupil.

(b) The board shall annually adjust the factors set forth in subdivision (a) according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) It is the intent of the Legislature that the amounts provided pursuant to this article for school modernization do not include funding for administrative and overhead costs.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to two thousand five hundred dollars ($2,500) for any modernization project assistance. The amount of the supplemental apportionment shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction. This subdivision shall be operative only until January 1, 2003.

SEC. 13. Section 17076.10 of the Education Code is amended to read:

17076.10. (a) A school district that has received any funds pursuant to this chapter shall submit a summary report of expenditure of state funds and of district matching funds annually until all state funds and district matching funds are expended, and shall then submit a final report to the board. The board may require an audit of these reports or other district records to ensure that all funds received pursuant to this chapter are expended in accordance with program requirements.

(b) If the board finds that a participating school district has made no substantial progress towards increasing its pupil capacity or renovating its facilities within 18 months of the receipt of any funding pursuant to this chapter, the board shall rescind the apportionment in an amount equal to the unexpended funds.

(c) If the board, after the review of expenditures or audit has been conducted pursuant to subdivision (a), determines that a school district failed to expend funds in accordance with this chapter, the department shall notify the school district of the amount that must be repaid to the 1998 State School Facilities Fund within 60 days. If the school district fails to make the required payment within 60 days, the department shall notify the Controller and the school district in writing, and the Controller shall deduct an amount equal to the amount received by the school district under this subdivision, from the school district's next principal apportionment or apportionments of state funds to the school district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution. Any amounts obtained by the Controller shall be deposited into the 1998 State School Facilities Fund.

(d) If a school district has received an apportionment, but has not met the criteria to have funds released pursuant to Section 17072.32 or 17074.15 within a period established by the board, but not to exceed 18 months, the board shall rescind the apportionment and deny the district's application.

SEC. 14. Section 100420 of the Education Code is amended to read:

100420. (a) Of the proceeds from the sale of bonds, issued and sold pursuant to this chapter, as specified in subdivision (a) of Section 100410, not more than three billion three hundred fifty million dollars ($3,350,000,000) shall be allocated beginning in the 1998–99 fiscal year in accordance with the following schedule:

(1) Not less than one billion three hundred fifty million dollars ($1,350,000,000) for project funding related to the growth in enrollment of applicant school districts under Chapter 12 and Chapter 12.5 that have incurred or will incur enrollment increases.

(2) Not less than eight hundred million dollars ($800,000,000) for the reconstruction or modernization of facilities pursuant to Chapter 12 and Chapter 12.5.

(3) Not more than five hundred million dollars ($500,000,000) shall be deposited in the Public School Critical Hardship Account, which is hereby established in the 1998 State School Facilities Fund and shall be allocated by the State Allocation Board to fund critical hardships as defined in Chapter 12.5. These funds may be expended for the acquisition of portable classrooms for use in accordance with Chapter 14 (commencing with Section 17085) of Part 10.

(4) (A) Not more than seven hundred million dollars ($700,000,000) may be allocated to assist school districts with site acquisition and facilities-related costs of kindergarten and grades 1 to 3, inclusive, that are in the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28 and Chapter 19 (commencing with Section 17200) of Part 10, and to assist districts with the restoration of facilities that previously accommodated other programs and were displaced as a result of the

implementation of class size reduction. On and after July 1, 2000, if applications for the total funds available under this paragraph have not been filed with the State Allocation Board, the funds for which applications have not been received may be allocated by the board to other high priority needs as the board determines. On and after July 1, 2003, any funds not allocated are available for other high priority needs.

(B) The funds allocated in subparagraph (A) shall be allocated to the State Department of Education to provide class size reduction facilities grants necessary to implement the K–3 Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28 and Chapter 19 (commencing with Section 17200) of Part 10. The department shall certify to the State Allocation Board the amount of funds needed for this purpose. The board shall transfer the amount of funds needed to the department. From these funds, the department shall award eligible districts forty thousand dollars ($40,000) for each new option one class established for class size reduction for which the district had not previously received funding under class size reduction facilities programs.

(C) The remaining funds provided pursuant to subparagraph (A) shall be to provide funding for schoolsites that were eligible to receive a class size reduction land-locked waiver pursuant to Section 52122.6. The funds may be provided to districts to provide 50 percent of the cost of funding a facilities mitigation plan developed for the impacted site pursuant to Section 52122.7.

(D) Any funds not expended pursuant to subparagraphs (A), (B), or (C) may be allocated to districts that request funding of forty thousand dollars ($40,000) for each teaching station that (1) was displaced as a result of the implementation of class size reduction and (2) received less than forty thousand dollars ($40,000) per teaching station in 1996–97 pursuant to Chapter 19 (commencing with Section 17200) of Part 10. Programs for which teaching stations may be restored may include child care, extended day care, school libraries, computer labs, and special education classrooms.

(b) Of the proceeds from the sale of bonds issued and sold pursuant to this chapter, as specified in subdivision (b) of Section 100410, not more than three billion three hundred fifty million dollars ($3,350,000,000) shall be allocated beginning in the 2000–01 fiscal year in accordance with the following schedule:

(1) Not less than one billion five hundred fifty million dollars ($1,550,000,000) for project funding related to the growth in enrollment of applicant school districts under Chapter 12.5 that have incurred or will incur enrollment increases.

(2) Not less than one billion three hundred million dollars ($1,300,000,000) for the reconstruction or modernization of facilities pursuant to Chapter 12.5.

(3) Not more than five hundred million dollars ($500,000,000) shall be deposited in the Public School Critical Hardship Account in

the 1998 State School Facilities Fund and shall be allocated by the State Allocation Board to fund critical hardships as defined in Chapter 12.5. These funds may be expended for the acquisition of portable classrooms for use in accordance with Chapter 14 (commencing with Section 17085) of Part 10.

(c) Districts may use funds allocated pursuant to paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) for one or more of the following purposes in accordance with Chapter 12.5:

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high priority roof replacement projects.

(5) Any other renovation or modernization of facilities pursuant to Chapter 12.5.

(d) Funds allocated pursuant to paragraph (1) of subdivision (a) and paragraph (1) of subdivision (b) may be utilized to provide new construction grants, without regard to funding priorities, for applicant county boards of education under Chapter 12.5 that are eligible for that funding or classrooms for severely handicapped pupils and funding for classrooms for county community school pupils.

(e) (1) The Legislature may amend this section to adjust the minimum funding amounts specified in paragraphs (1) and (2) of subdivision (a) and the maximum funding amounts specified in paragraphs (3) and (4) of subdivision (a), and to adjust the minimum funding amounts specified in paragraphs (1) and (2) of subdivision (b) and the maximum funding amount specified in paragraph (3) of subdivision (b), by either of the following methods:

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (4), inclusive, of subdivision (a) or paragraphs (1) to (3), inclusive, of subdivision (b) or both, but may not increase or decrease the total amount to be expended pursuant to either subdivision.

SEC. 15. Section 1003 of the Elections Code is amended to read:

1003. This chapter shall not apply to the following:

(a) Any special election called by the Governor.

(b) Elections held in chartered cities or chartered counties in which the charter provisions are inconsistent with this chapter.

(c) School governing board elections consolidated pursuant to Section 5006 of the Education Code or initiated by petition pursuant to Section 5091 of the Education Code.

(d) Elections of any kind required or permitted to be held by a school district located in a chartered city or county when the election is consolidated with a regular city or county election held in a jurisdiction that includes 95 percent or more of the school district's population.

(e) County, municipal, district, and school district initiative, referendum, or recall elections.

(f) Any election conducted solely by mailed ballot pursuant to Division 4 (commencing with Section 4000).

(g) Elections held pursuant to Article 1 (commencing with Section 15100) of Chapter 1, or pursuant to Article 4 (commencing with Section 15340) of Chapter 2 of, Part 10 of the Education Code.

SEC. 16. Section 65995.5 of the Government Code is amended to read:

65995.5. (a) The governing board of a school district may impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high

school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(i) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(i) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7.

(e) Nothing in this section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) Except as provided in paragraph (5) of subdivision (a) of Section 17620 of the Education Code, a fee, charge, dedication, or other requirement authorized under this section and Section 65995.7 shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from

the construction of new residential units. This subdivision does not preclude the expenditure of a fee, charge, dedication, or other requirement, authorized pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 17620, on school facilities identified in the needs analysis as necessary due to projected enrollment growth attributable to the new residential units.

(g) "Residential units" and "residences" as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobilehomes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half of the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed the estimated amount that would be funded by the State Allocation Board pursuant to its regulations governing grants for site development costs.

SEC. 17. Section 65995.6 of the Government Code is amended to read:

65995.6. (a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. The existing school building capacity shall be recalculated by the school district as part

of any revision of the needs analysis pursuant to subdivision (e) of this section. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule.

(b) When determining the funds necessary to meet its facility needs, the governing board shall do each of the following:

(1) Identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities.

(2) Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities.

(3) Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

(c) The governing board shall adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until the school facilities needs analysis in its final form has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to the adoption of the school facilities needs analysis, the public shall have the opportunity to review and comment on the school facilities needs analysis and the governing board shall respond to written comments it receives regarding the school facilities needs analysis.

(d) Notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

(e) The school facilities needs analysis may be revised at any time in the same manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

(f) A fee, charge, dedication, or other requirement in an amount authorized by this section or Section 65995.7, shall be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. Notwithstanding subdivision (a) of Section 17621 of the Education Code, or any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this section.

(h) Notice and hearing requirements other than those provided in this section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

SEC. 18. The Legislature finds and declares that the modifications to the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998 made by this act further the purposes of, and are consistent with, that act.

CHAPTER 859

An act to amend Sections 9560, 9563, and 9564 of the Welfare and Institutions Code, relating to seniors.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 9560 of the Welfare and Institutions Code is amended to read:

9560. (a) The purpose of this chapter shall be to establish a program to serve frail elderly individuals 65 years of age and older who are certifiable for placement in a nursing facility. This program shall be known as the Multipurpose Senior Services Program, and shall be structured and carried out in a manner consistent with Section 1396n(c) of Title 42 of the United States Code.

(b) This chapter clarifies the intent of the Legislature that the Multipurpose Senior Services Program shall continue:

(1) To prevent premature disengagement of older individuals from their indigenous communities and subsequent commitment to institutions.

(2) To provide optimum accessibility of various important community social and health resources available to assist active older individuals to maintain independent living.

(3) To provide that the frail older individual who has the capacity to remain in an independent living situation has access to the appropriate social and health services without which independent living would not be possible.

(4) To provide the most efficient and effective use of public funds in the delivery of these social and health services.

(5) To coordinate, integrate, and link these social and health services, including county social services, by removing obstacles that impede or limit improvements in delivery of these services.

(6) To allow the state substantial flexibility in organizing or administering the delivery of social and health services to its older individuals.

(7) To provide access to social and health services by providing information and outreach activities in the community.

SEC. 2. Section 9563 of the Welfare and Institutions Code is amended to read:

9563. The department shall formulate criteria for approval and designation of local Multipurpose Senior Services Program sites. The criteria shall include, but need not be limited to, all of the following:

(a) Specifications for a social and health review team to evaluate older individuals and to ensure that continuity of social, economic, and health services is provided to maintain older individuals at the appropriate level of care.

(b) Development of social and health services necessary to maintain the older individual at the appropriate level of care.

(c) Specifications for the quality of the social and health services to be provided.

(d) Coordination and integration of the social and health services described in Section 9561.

(e) The number of local sites, which shall be consistent with the funds made available for purposes of this chapter.

(f) Coordination with local governmental and nonprofit agencies concerned with multipurpose senior services.

(g) Maximize utilization of local resources, including service provided by established community-based senior citizen organizations and information and referral networks.

(h) Specifications for the evaluation of the proposals submitted for the new local sites and for the evaluation of the local sites.

(i) Conditions for determining the need for procurement of existing sites. Notwithstanding any other provisions of law, nothing in this chapter shall be construed as mandating that an existing site be reprocured periodically.

SEC. 3. 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 expanding the number of sites to include additional geographic regions of the state.

CHAPTER 860

An act to add Section 25000.6 to the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 25000.6 is added to the Business and Professions Code, to read:

25000.6. (a) A provision in an agreement between a beer manufacturer and a beer wholesaler for the sale and distribution of beer in this state, which restricts venue to a forum outside this state, is void with respect to any claim arising under or relating to the agreement involving a beer wholesaler operating within this state.

(b) This section shall apply to any transaction or conduct pursuant to an agreement described in subdivision (a) on or after the effective date of this section.

CHAPTER 861

An act to add and repeal Chapter 9.5 (commencing with Section 19820) of Part 2 of Division 10 of the Welfare and Institutions Code, relating to disabled persons, and making an appropriation therefor.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Chapter 9.5 (commencing with Section 19820) is added to Part 2 of Division 10 of the Welfare and Institutions Code, to read:

CHAPTER 9.5. PREEMPLOYMENT PILOT PROGRAM FOR PERSONS WITH DISABILITIES

19820. (a) The department shall allocate funding pursuant to this chapter to a private, nonprofit organization in Los Angeles County that has demonstrated the ability to provide assessment and vocational services to disabled clients for over a period of at least 50 years in order to establish a pilot employment program for adults with developmental, physical, and emotional disabilities who are eligible for Department of Rehabilitation services but who are currently unable to receive those services. Regional center clients shall not be eligible for the pilot project.

(b) The program shall serve adults with one or more disabilities who express a desire to increase their daily living skills to a level that will enable them to obtain community-based employment and who can benefit from a structured program outside their home environment.

(c) The pilot program shall operate for a period of three years.

(d) The purpose of this pilot program shall be to test whether additional expenditures of state funds on rehabilitation services for clients, who would otherwise be unable to receive services from the Department of Rehabilitation due to funding limitations, will result in increases in employment, earnings, and self-sufficiency. The pilot program will be considered a success if it can be shown that its clients reduce their reliance on other governmental programs so that demonstrated savings in these other programs are sufficient to offset the cost of the rehabilitation services.

19821. (a) The two primary components of the program established pursuant to this chapter shall be prevocational training and preemployment preparation. A certified vocational evaluator and a rehabilitation counselor, in consultation with the client, family members, or advocates shall determine the component into which a client shall enter the program.

(b) Clients who are assessed as having adequate daily living skills or who satisfactorily complete this component shall, if interested in community-based employment, receive prevocational training. Clients who successfully complete the prevocational component shall be eligible to receive preemployment preparation training. Clients in the preemployment preparation component shall be assisted in formulating and achieving a vocational action plan, as well as obtaining the vocational skills necessary for its achievement.

19822. (a) The department shall conduct an evaluation of the pilot program provided for in this chapter and of the outcomes achieved. The evaluation shall report on the characteristics of the pilot program's participants, including their age, sex, ethnicity, and nature of disability. The evaluation shall document the procedures to select clients, the nature, cost, and duration of services received during pilot program participation, and the extent and nature of

other public and private services used by the clients before, during, and after program participation. The evaluation shall, to the extent possible, provide estimates of the overall average cost of the program, the average cost of governmental services used prior to program participation, and the average cost of services after program participation, in order to determine whether participation in the pilot program resulted in any reduction in reliance on publicly funded services.

(b) The department shall submit the evaluation to the Legislature no later than December 31, 2002.

19823. 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.

SEC. 2. There is hereby appropriated the sum of one hundred fifteen thousand dollars ($115,000) from the General Fund to the Department of Rehabilitation for allocation for startup costs and first-year implementation of Chapter 9.5 (commencing with Section 19820) of Part 2 of Division 10 of the Welfare and Institutions Code.

CHAPTER 862

An act to repeal the heading of Chapter 4 (immediately following Section 14536) of Part 5.3 of Division 3 of, to repeal the heading of Article 1 (immediately following Section 14536) of Chapter 4 of Part 5.3 of Division 3 of, and to add Chapter 4 (commencing with Section 14550) to Part 5.3 of Division 3 of, the Government Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. The heading of Chapter 4 (immediately following Section 14536) of Part 5.3 of Division 3 of the Government Code is repealed.

SEC. 2. The heading of Article 1 (immediately following Section 14536) of Chapter 4 of Part 5.3 of Division 3 of the Government Code is repealed.

SEC. 3. Chapter 4 (commencing with Section 14550) is added to Part 5.3 of Division 3 of the Government Code, to read:

CHAPTER 4. FEDERAL HIGHWAY GRANT ANTICIPATION NOTES

Article 1. Legislative Findings and Declarations

14550. The Legislature hereby finds and declares all of the following:

(a) Between 1970 and 1990, California's population grew by 50 percent, while the total number of miles driven in the state increased by 100 percent.

(b) Conservative estimates have the state adding an additional 6 million new residents by the end of the next decade.

(c) Revenues available for investment in California's transportation system have not kept pace with that increasing state population, or with the increased demand on the state's transportation infrastructure.

(d) California is now home to five of the nation's 10 most congested urban areas.

(e) Between 1987 and 1995, the number of California drivers who sit idle in traffic congestion has grown by 70 percent, and California drivers now sit idle in traffic congestion more than 300,000 hours per day.

(f) It is estimated that traffic congestion in California now costs the state's businesses more than two million eight hundred thousand dollars ($2,800,000) per day in lost time and resources.

(g) The United States Congress recently authorized states under the federal National Highway System Designation Act of 1995 and the federal Transportation Equity Act for the 21st Century to issue "GARVEE bonds," which are tax-exempt anticipation notes backed by annual federal appropriations for federal aid transportation projects.

(h) Utilizing grant anticipation notes to finance federal transportation projects can greatly accelerate projects and can result in significant cost savings to the state, since those transportation projects can be completed at present-day costs.

(i) Funding transportation projects with grant anticipation notes can also deliver projects to the public significantly sooner than traditional funding mechanisms.

(j) Therefore, it is in the best interest of the State of California to develop these new and innovative methods for funding and accelerating critical transportation infrastructure projects.

Article 2. Definitions

14552. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

14552.2. "Eligible Project" means any highway or other transportation project that has been designated for accelerated construction by the commission.

14552.4. "Federal transportation funds" means any funds apportioned to the state by the United States Department of Transportation, including, but not limited to, funds paid pursuant to the Transportation Equity Act for the 21st Century (Public Law 105-178).

14552.6. A "note" is a federal highway grant anticipation note issued by the Treasurer under this chapter.

Article 3. Selection of Projects

14553. (a) The commission may from time to time select and designate eligible projects to be funded from the proceeds of notes, if financing of the project from the proceeds of notes has been approved by the Federal Highway Administration and the regional transportation planning agency, and the project has completed environmental clearance and project design.

(b) Notwithstanding Section 7550.5 of the Government Code, on or before April 1 of each year, the commission, in conjunction with the Treasurer's office, shall prepare an annual analysis of the bonding capacity of federal transportation funds deposited in the State Highway Account in the State Transportation Fund.

14553.2. The commission, in cooperation with the department and regional transportation planning agencies, shall establish guidelines for eligibility for funding allocations under this chapter. The guidelines shall be nondiscriminatory and shall be designed to allow as many counties as possible to establish eligibility for funding allocations under this chapter, regardless of the population or geographic location of the county.

14553.4. The Treasurer may not authorize the issuance of notes if the annual repayment obligations of all outstanding notes in any fiscal year would exceed 30 percent of the total amount of federal transportation funds deposited in the State Highway Account in the State Transportation Fund for any consecutive 12-month period within the preceding 24 months.

14553.6. All funds allocated to a project under this chapter, including cost overruns and financing costs, shall be counted against the state transportation improvement program county share for the county in which the project is located.

14553.7. In order to provide security for repayment of the notes, the commission shall adopt a resolution dedicating and pledging any future receipts of federal transportation funds received by the state to the payment of principal of, and interest and premium on the notes, for as long as any notes remain outstanding. That action shall constitute a pledge or receipt of those moneys as collateral within the meaning of subdivision (b) of Section 5450. The pledge shall be governed under Chapter 5.5 (commencing with Section 5450) of Division 6 of Title 1 of the Government Code. The commission shall

be deemed a "public body" for purposes of Section 5451, as defined in Section 5450.

14553.8. Before notes are issued under this chapter, the commission, in cooperation with the department, shall consider and determine the appropriateness of the mechanism authorized by this chapter in comparison to other funding mechanisms, including, but not limited to, pay-as-you-go, federal advance construction, federal incremental advance construction, or other funding methods authorized under federal law to achieve maximum efficiency from the state's federal allocation of transportation funds.

14553.9. (a) Upon taking the actions authorized under this article, the commission may request the Treasurer to issue notes to provide funds for the eligible projects.

(b) Notwithstanding Section 7550.5 of the Government Code, on or before April 1 of each year, the commission shall prepare and submit an annual report regarding the preceding calendar year to the Governor and the Legislature. Each report shall compile and detail the total amount of outstanding debt issued pursuant to this chapter and the projects funded by that outstanding debt.

Article 4. Issuance of Notes

14554. (a) In order to provide for the financing of selected projects, the Treasurer may issue tax-exempt or taxable notes under this article. Proceeds of the sale of those notes shall be deposited in the Transportation Financing Subaccount, which is hereby created as a special trust fund in the State Highway Account in the State Transportation Fund. The funds in the subaccount shall be available for use as directed by the commission and administered by the department and to pay costs associated with the issuance or further security of the notes or for capitalized interest of up to 12 months.

(b) Any issue of notes may be secured and made more attractive to capital markets through financial instruments, including, but not limited to, the following:

(1) Credit enhancements, including, but not limited to, letters of credit, bond insurance, and surety bonds provided by private sector financial institutions.

(2) Insurance and guarantees provided by any other agency of the state.

14554.2. The Treasurer shall issue notes from time to time pursuant to a resolution from the commission. Those pledges shall be governed under Chapter 5.5 (commencing with Section 5450) of Division 6 of Title 1 of the Government Code. The resolution may contain any of the following provisions, which shall be a part of the contract with the holders of the notes to be authorized:

(a) Provisions pledging receipt of future federal transportation funds to secure the payment of the notes or of any particular issue of notes, subject to those agreements with noteholders as may then

exist, and pledging moneys held in funds and accounts pursuant to the note issue, or the earnings thereon. The Treasurer may authorize classes of notes having different priority in the receipt of available federal transportation funds.

(b) Provisions for the investment of proceeds of the notes or of the moneys received by the Treasurer for repayment of the notes.

(c) Provisions setting aside reserves or sinking funds, and the regulation and disposition thereof.

(d) Limitations on the issuance of additional notes, the terms upon which additional notes may be issued and secured, and the refunding of outstanding notes.

(e) The procedure, if any, by which the terms of any contract with noteholders may be amended or abrogated, the amount of notes and the holders thereof that are required to give consent thereto, and the manner in which the consent may be given.

(f) Definitions of acts or omissions to act that constitute a default in the duties of the state to holders of the notes, and provisions on the rights and remedies of the holders in the event of a default.

14554.4. Any notes issued under this chapter may be secured by a trust agreement, indenture, or resolution by and between the commission and a trustee. The trustee may be the Treasurer or a bank or trust company chartered under the laws of this state or of the United States and designated by the Treasurer. The Treasurer may act under the note resolution as the fiscal agent for the notes.

14554.6. The notes shall be authorized by resolution or resolutions of the Treasurer, shall be in the form, shall bear the date or dates, and shall mature at the time or times, as the resolution or resolutions may provide, except that no note may mature more than 30 years from the date of its issue. The fixed or variable notes shall bear interest at the rate or rates, be in the denominations, be in the form, be executed in the manner, be payable in the medium of payment at the place or places within or without the state, be subject to the terms of redemption and contain the terms and conditions, that the resolution or resolutions may provide. The notes shall be sold at public or private sale by the Treasurer at, above, or below the par value, on the terms and conditions and for the consideration that the Treasurer shall determine.

14554.8. (a) Notwithstanding Section 13340 of the Government Code, the amounts specified in the annual Budget Act as having been deposited in the State Highway Account in the State Transportation Fund from federal transportation funds, and pledged by the commission under this chapter, are hereby continuously appropriated, without regard to fiscal years, to the Treasurer for the purposes of, and in accordance with, this chapter.

(b) Funds that are subject to Section 1 or 2 of Article XIX of the California Constitution may be used as the state or local principal match for any project that is eligible for federal matching funds and is funded pursuant to this chapter.

14555. Upon request of the commission, the Treasurer may issue refunding notes to refund any outstanding notes, and to pay costs associated with that refunding.

14555.2. Whenever the Treasurer deems that it will increase the salability or the price of the notes to obtain, prior to or after sale, a legal opinion, other than that of the Attorney General, as to the validity or tax-exempt nature of the notes, the Treasurer may obtain that legal opinion. Payment for those legal services shall be made from the proceeds of the sale of the notes.

14555.4. The Treasurer may employ financial, engineering, or transportation consultants or advisers, underwriters, and accountants as may be necessary in his or her judgment in connection with the issuance and sale of any notes of the Treasurer. Payment for these services may be made out of the proceeds of the sale of the notes.

14555.6. Section 10295 of the Public Contract Code and Article 4 (commencing with Section 10335) of, and Article 5 (commencing with Section 10355) of, Chapter 2 of Part 2 of Division 2 of the Public Contract Code do not apply to agreements entered into by the Treasurer pursuant to the sale of notes authorized under this chapter.

14555.8. Notes issued under this chapter are a legal investment for any state special or trust fund notwithstanding any provision of law limiting the investments that may be made by the special or trust fund. The notes shall be legal investments in which all public officers and public bodies of the state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, savings and loan associations, savings banks and savings associations, investment companies, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons authorized to invest in notes or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The notes may be used as security for public deposits. The notes are also securities that may properly and legally be deposited with and received by all public officers and bodies of state or any agency or political subdivision of the state and all municipalities and public corporations for any purpose for which the deposit of notes or other obligations of the state is authorized by law, including deposits to secured public funds.

14555.9. Notes issued under the provisions of this chapter may not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, or a pledge of the full faith and credit of the state or of any political subdivision thereof, but shall be payable solely from the funds and revenues pledged therefor. All the notes shall contain on their face a statement to the effect that the State of California shall not be obligated to pay the principal, or the interest on the notes, except from the revenues received by the Treasurer as shall be provided by the documents governing the revenue note

issuance, and that neither the faith and credit nor the taxing power of the State of California or of any of its political subdivisions is pledged to the payment of the principal or interest on the notes. The issuance of notes under this part shall not directly or indirectly or contingently obligate the state or any of its political subdivisions to levy or to pledge any form of taxation whatever or to make any appropriation for their payment.

CHAPTER 863

An act to add Sections 91559, 91559.1, 91559.2, 91559.3, and 91559.4 to, and to add and repeal Section 91558.5 of, the Government Code, relating to economic development, and making an appropriation therefor.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. (a) The Legislature finds and declares that there is a need to maximize the availability of capital to California small businesses for purposes of business expansion and job creation.

(b) The Legislature finds and declares that economic development lenders are a source of small business financing to communities with historically lower overall access to capital. It is estimated that community and economic development lenders have loans outstanding in this state in excess of three hundred fifty million dollars ($350,000,000) and provide loans to California businesses that cannot attract private financing. The capital is then recycled as the loans are repaid by relending the capital to other businesses.

(c) The Legislature finds and declares that stimulating a secondary market for community and economic development lenders can significantly increase the availability of capital to California small businesses.

SEC. 2. Section 91558.5 is added to the Government Code, to read:

91558.5. (a) For purposes of this section, the following terms have the following meanings:

(1) "Economic development lenders" may include public, private, or quasi-public community development loan funds, microenterprise funds, community development corporation-based loan funds, community and economic development venture funds, revolving loan funds, and community development financial institutions, as defined in Section 1805.200 of Title 12 of the Code of Federal Regulations.

(2) "Fund" means the Community and Economic Development Fund established pursuant to subdivision (b).

(3) "Measured criteria" means evaluation of active loans based upon the lender's original underwriting criteria, including, but not limited to, the payment history of the borrower, the relationship between the lender and borrower, and the borrower's pledged collateral. "Measured criteria" also includes traditional credit risk analysis.

(4) "Overcollateralization" means the assignment of collateral in excess of the principal amount of the debt secured by that collateral.

(5) "Reserve fund" means cash assets held in the fund to offset loan losses otherwise intended to meet the dividend obligations of the commission pursuant to this section. The reserve fund may be capitalized by the transfer to the fund made by the act adding this section, by loan payments from loans pledged to the commission by economic development lenders pursuant to subdivision (d), and by revenue generated through the bonds secured by those loans.

(6) "Subordination" means the commission's right to receive payment on the loans securing the bonds issued by the commission shall be subordinate to the obligations owed to the purchasers of those bonds.

(b) The Community and Economic Development Fund is hereby created in the State Treasury and, notwithstanding Section 13340, this fund is continuously appropriated to the commission for purposes of this section. The commission may expend up to 10 percent of any moneys appropriated by the Legislature to the fund for administrative costs directly related to the implementation of this section.

(c) The commission shall establish procedures to evaluate and certify the participation of economic development lenders in the state in a program that allows lenders to recapitalize their financial resources in order to meet the current demands of borrowers. The evaluation and certification procedures shall include the performance of due diligence on the part of economic development lenders and for each loan a lender seeks to pledge as collateral to the commission pursuant to subdivision (f).

(d) To the extent funds are appropriated by the Legislature for the purposes of this subdivision, the commission shall develop and maintain a data base on economic development lenders in the state, including, but not limited to, the asset size of each lender, average loan size and loan duration, borrower target groups, and loan default and loan loss rates. The data base shall also include information on loans pledged by economic development lenders to participate in the program.

(e) To the extent funds are appropriated by the Legislature for the purposes of this subdivision, the commission shall recommend minimum standards for loan documentation, loan underwriting, and loan servicing for economic development lenders who participate in

the program. The loan documentation, underwriting, and servicing standards shall be designed to promote uniformity in the commission's process of loan evaluation and due diligence for individual loans. The loan documentation and underwriting standards shall seek to be consistent with the mission of economic development lenders eligible for participation under this part. The commission shall develop measurement criteria for consideration of existing loans pledged for participation in the program that were made by economic development lenders prior to the establishment of the minimum standards.

(f) To the extent funds are appropriated by the Legislature for the purposes of this subdivision, the commission shall provide technical assistance to lenders in order to increase utilization of the minimum loan documentation, loan underwriting, and loan servicing standards.

(g) Once certified by the commission to participate in the program, economic development lenders may pledge as collateral to the commission current and active loans in exchange for cash liquidity. The amount of cash liquidity available for each loan shall be determined on a loan-by-loan basis, shall be based upon the projected income from the loan and the perceived risk of the loan, and shall provide the economic development lender a reasonable value for the loan asset. The income stream from loans pledged as collateral to the commission shall accrue to the commission in order to regenerate the fund.

(h) Loans pledged to the commission pursuant to subdivision (g) shall serve as collateral for bonds issued by the commission. The revenue generated by the issuance of bonds secured by those loans shall be used to regenerate the fund and may also be used by the commission to establish and recapitalize a reserve fund. The commission may provide credit enhancements for these bonds in order to support the credit quality of the bonds and increase their marketability to investors. Credit enhancements by the commission may include, but shall not be limited to, overcollateralization, subordination, third party letters of credit, or a reserve fund dedicated to ensure full and timely repayment of the bonds.

(i) The commission shall report to the Governor and the Legislature on or before January 1, 2004, on the effectiveness of this program in creating a secondary market for community and economic development lenders and on any recommended changes to the program established by this section.

(j) 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. This subdivision shall not, however, apply to any bonds secured by loans pledged to the commission pursuant to this section, if those bonds were issued prior to, and remain outstanding on, January 1, 2005. Those bonds shall remain outstanding until their redemption date or

until the time that they are purchased or mature, and the commission may issue bonds for the purpose of refunding those outstanding bonds only for the purpose of reducing the commission's borrowing costs, and provided further that the term of the bonds so refunded is not extended. Upon prepayment of the loans securing those bonds, the bonds shall be redeemed as soon as practicable.

SEC. 3. Section 91559 is added to the Government Code, to read:

91559. (a) The commission is authorized from time to time to issue its negotiable bonds, notes, debentures, or other securities, collectively called "bonds," in order to provide funds for financing projects or achieving any of its other purposes, except that the commission is not authorized to issue industrial development bonds. Without limiting the generality of the foregoing, the bonds may be authorized to finance a single project for a single company, a series of projects for a single company, or several projects for several participating parties. In anticipation of the sale of these bonds, the commission may issue negotiable bond anticipation notes and may renew the notes from time to time. The notes shall be paid from any revenues of the commission or other moneys available therefor and not otherwise pledged, or from the proceeds of the sale of the bonds of the commission in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds. The notes and agreements relating to notes and bond anticipation notes, collectively called "notes," and the resolution or resolutions authorizing the notes may contain any provisions, conditions, or limitations which a bond, agreement relating to the bond, and bond resolution of the commission may contain.

(b) Except as may otherwise be expressly provided by the commission, every issue of its bonds or notes shall be general obligations of the commission payable from any revenues or moneys of the commission available therefor and not otherwise pledged, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or moneys and subject to any agreements with any company. Notwithstanding that the bonds, notes, or obligations may be payable from a special fund, they shall be, and shall be deemed to be, for all purposes negotiable instruments, subject only to the provisions of the bonds, notes, or other obligations for registration.

(c) The bonds may be issued as serial bonds or as term bonds, or the commission, in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the commission and shall bear the date or dates, mature at the time or times, not exceeding 40 years from their respective dates, bear interest at the rate or rates, be payable at the time or times, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in lawful money of the United States at the place or places, and be subject to the terms of redemption, as the resolution or resolutions may provide. The bonds

or notes may be sold by the Treasurer at public or private sale, for the price or prices and on the terms and conditions as the commission shall determine, after giving due consideration to the recommendations of any company to be assisted from the proceeds of the bonds or notes. Pending preparation of definitive bonds, the Treasurer may issue interim receipts, certificates, or temporary bonds that shall be exchanged for the definitive bonds. The Treasurer may sell any bonds, notes, or other evidence of indebtedness at a price below the par value thereof.

(d) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to the following:

(1) Pledging the full faith and credit of the commission or pledging all or any part of the revenues of any project or any revenue-producing contract or contracts made by the commission with any individual, partnership, corporation, or association or other body, public or private, or other moneys of the commission, to secure the payment of the bonds or of any particular issue of bonds, subject to those agreements with bondholders as may then exist.

(2) The rentals, fees, purchase payments, loan repayments, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues.

(3) The setting aside of reserves or sinking funds, and the regulation and disposition thereof.

(4) Limitations on the right of the commission or its agent to restrict or regulate the use of the project or projects to be financed out of the proceeds of the bonds or any particular issue of bonds.

(5) Limitations on the purpose to which the proceeds of the sale of any issue of bonds then or thereafter to be issued may be applied, and pledging those proceeds to secure the payment of the bonds or any issue of the bonds.

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bond that the holders of which are required to consent thereto, and the manner in which the consent may be given.

(8) Limitations on expenditures for operating, administrative, or other expenses of the commission.

(9) Defining the acts or omissions to act which constitute a default in the duties of the commission to holders of its obligations, and providing the rights and remedies of the holders in the event of a default.

(10) The mortgaging of any project and the site of the project for the purpose of securing the bondholders.

(11) The mortgaging of land, improvements, or other assets owned by a company for the purpose of securing the bondholders.

(12) Procedures for the selection of projects to be financed with the proceeds of the bonds authorized by the resolution, if the bonds are sold in advance of designation of the projects, and participating parties to receive the financing.

(e) Neither the members of the commission, nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The commission shall have the power out of any funds available for these purposes to purchase its bonds or notes. The commission may hold, pledge, cancel, or resell those bonds, subject to and in accordance with agreements with the bondholders.

(g) Any funds of the commission, including without limitation, proceeds from the sale of bonds or notes, may be invested in any obligations of any state or local government meeting the requirements of subsection (a) of Section 103 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 103(a)) including mutual funds, trusts, and similar instruments representing a pool of obligations. The Treasurer may adopt regulations providing appropriate investment standards for those investments. If the Treasurer determines it to be necessary to assure compliance with federal tax laws or regulations, the commission may, notwithstanding any other provision of law, deposit funds received as fees from the issuance of its obligations with a bank or trust company acting on behalf of the commission.

SEC. 4. Section 91559.1 is added to the Government Code, to read:

91559.1. In the discretion of the commission, any bonds issued under the provisions of this article may be secured by a trust agreement by and between the commission and a corporate trustee or trustee, which may be the Treasurer or any trust company or bank having the powers of a trust company within or without the state. The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or projects, or any portion thereof, to be financed out of the proceeds of the bonds. The trust agreement or resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of the law, including particularly provisions that have been specifically authorized in this article to be included in any resolution or resolutions of the commission authorizing bonds thereof. Any bank or trust company doing business under the laws of this state which may act as depositary of the proceeds of bonds or of revenues or other moneys may furnish indemnifying bonds or pledge securities as may be

required by the commission. Any trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition to the foregoing, any trust agreement or resolution may contain other provisions as the commission may deem reasonable and proper for the security of the bondholders. Notwithstanding any other provision of law, the Treasurer shall not be deemed to have a conflict of interest by reason of acting as trustee pursuant to this division. All expenses incurred in carrying out the provisions of the trust agreement or resolution may be treated as a part of the cost of the operation of a project.

SEC. 5. Section 91559.2 is added to the Government Code, to read:

91559.2. Bonds issued under the provisions of this article shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the commission, or a pledge of the faith and credit of the state or of any political subdivision, other than the commission, but shall be payable solely from the funds herein provided therefor. All bonds shall contain on the face thereof a statement to the effect: "Neither the faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of or interest on this bond." The issuance of bonds under the provisions of this article shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. Nothing contained in this section shall prevent nor be construed to prevent the commission from pledging its full faith and credit to the payment of bonds or issue of bonds authorized pursuant to this article.

SEC. 6. Section 91559.3 is added to the Government Code, to read:

91559.3. (a) The commission is authorized to issue bonds of the commission for the purpose of refunding any bonds, notes, or securities of the commission then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of those bonds, and, if deemed advisable by the commission, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions, or enlargements of a project or any portion thereof.

(b) The proceeds of any bonds issued for the purpose of refunding outstanding bonds, notes, or securities may, in the discretion of the commission, be applied to the purchase, retirement at maturity, or redemption prior to maturity, of any outstanding bonds either on their earliest redemption date or dates, any subsequent redemption date or dates, upon their purchase or maturity, or paid to a third person to assume the commission's obligation to make the payments, and may, pending that application, be placed in escrow to be applied

to the purchase, retirement at maturity, or redemption on the date or dates determined by the commission.

(c) Any proceeds placed in escrow may, pending their use, be invested and reinvested in obligations or securities authorized by resolutions of the commission, payable or maturing at the time or times as are appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, of the outstanding bonds to be refunded at maturity or redemption of the bonds to be refunded either at their earliest redemption date or dates or any subsequent redemption date or dates. The interest, income, and profits, if any, earned or realized on any investment may also be applied to the payment of the outstanding bonds to be refunded or to the payment of interest on the refunding bonds. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the commission for use by the commission.

(d) The portion of the proceeds of any bonds issued for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions, or enlargements of a project may be invested and reinvested in obligations or securities authorized by resolution of the commission, maturing not later than the time or times when the proceeds will be needed for the purpose of paying all or any part of the cost. The interest, income, and profits, if any, earned or realized on the investments may be applied to the payment of all or any part of the cost or may be used by the commission in any lawful manner.

(e) All of those refunding bonds are subject to this article in the same manner and to the same extent as other bonds issued pursuant to this article.

SEC. 7. Section 91559.4 is added to the Government Code, to read:

91559.4. The State of California does pledge to and agree with the holders of the bonds, notes, and other obligations issued pursuant to this article, and with those parties who may enter into contracts with the commission pursuant to the provisions of this article, that the state will not limit, alter, or restrict the rights hereby vested in the commission until the bonds, together with the interest thereon, are fully paid and discharged and those contracts are fully performed on the part of the commission. The commission as agent for the state is authorized to include this pledge and undertaking for the state in those bonds or contracts.

CHAPTER 864

An act relating to veterans, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

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

(a) During World War II, 16,000,000 Americans served in the armed services of the United States and 406,000 paid the ultimate price by giving their lives in the defense of freedom.

(b) To honor these brave Americans and the millions who supported their efforts at home, by Public Law 103-32, Congress authorized the American Battle Monuments Commission to establish a World War II Memorial in Washington, D.C.

(c) Congress approved the design and plans for the memorial in May 1999, and set a construction start date of Veterans Day, 2000.

(d) The estimated cost of the monument is one hundred million dollars ($100,000,000).

(e) One million thirty-two thousand Californians served in World War II, and 17,048 died in battle defending their country.

SEC. 2. (a) The sum of one million thirty-two thousand dollars ($1,032,000) is hereby appropriated from the General Fund to the Department of Veterans Affairs for allocation to the American Battle Monuments Commission, specified in Section 1 of this act, for the construction of the World War II Memorial described in that Section 1.

(b) The funds are provided in honor of the Californians who unselfishly served their country during this worldwide war.

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 funds for the World War II Memorial within the timeframe to meet the scheduled construction date, it is necessary for this act to take effect immediately.

CHAPTER 865

An act to amend Sections 6203, 6452, 6454, 6479.3, 6480.1, 6480.6, 6480.16, 6592, 7273, 7354, and 8101 of, and to add Sections 6479.31, 8106.7, and 8127.6 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 6203 of the Revenue and Taxation Code is amended to read:

6203. (a) Except as provided by Sections 6292 and 6293, every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted under Chapter 3.5 (commencing with Section 6271) or Chapter 4 (commencing with Section 6351), shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) As respects leases constituting sales of tangible personal property, the tax shall be collected from the lessee at the time amounts are paid by the lessee under the lease.

(c) "Retailer engaged in business in this state" as used in this section and Section 6202 means and includes any of the following:

(1) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(2) Any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property.

(3) As respects a lease, any retailer deriving rentals from a lease of tangible personal property situated in this state.

(4) (A) Any retailer soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities.

(B) This paragraph shall become operative upon the enactment of any congressional act that authorizes states to compel the collection of state sales and use taxes by out-of-state retailers.

(5) Notwithstanding Section 7262, a retailer specified in paragraph (4) above, and not specified in paragraph (1), (2), or (3) above, is a "retailer engaged in business in this state" for the purposes of this part and Part 1.5 (commencing with Section 7200) only.

(d) (1) For purposes of this section, "engaged in business in this state" does not include the taking of orders from customers in this state through a computer telecommunications network located in this state which is not directly or indirectly owned by the retailer when the orders result from the electronic display of products on that same network. The exclusion provided by this subdivision shall apply only to a computer telecommunications network that consists substantially of online communications services other than the displaying and taking of orders for products.

(2) This subdivision shall become inoperative upon the operative date of provisions of a congressional act that authorize states to compel the collection of state sales and use taxes by out-of-state retailers.

(e) Except as provided in this subdivision, a retailer is not a "retailer engaged in business in this state" under paragraph (2) of subdivision (c) if that retailer's sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than seven days, in whole or in part, in this state during any 12-month period and did not derive more than ten thousand dollars ($10,000) of gross income from those activities in this state during the prior calendar year. Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a "retailer engaged in business in this state," and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

(f) The Legislature finds and declares that the deletion of language by the act adding this subdivision that was contained in paragraphs (5) and (8) of subdivision (c) is intended to codify the holdings of recent court cases.

SEC. 1.5. Section 6452 of the Revenue and Taxation Code is amended to read:

6452. (a) On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed with the board in the form as prescribed by the board, which may include, but not be limited to, electronic media.

(b) (1) For purposes of the sales tax, a return shall be filed by every seller and also by every person who is liable for the sales tax under this part. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person

purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath. If a return is prepared by a paid preparer, that preparer shall enter his or her name, social security number or federal employee identification number, and business name and address in the space provided on the return. Any paid preparer who fails to provide the information specified by the preceding sentence shall be subject to a fifty dollar ($50) fine for each failure to provide that information.

(2) For purposes of paragraph (1), "paid preparer" means any person who for compensation prepares, or employs one or more persons to prepare, any sales and use tax return required to be filed under this part. For purposes of this paragraph, the preparation of a substantial portion of any sales and use tax return required to be filed under this part shall be considered the equivalent of preparing that return in its entirety. A person is not a "paid preparer" as defined in this paragraph solely by reason of doing any of the following:

(A) Furnishing typing, reproduction, or other mechanical assistance.

(B) Preparing in a fiduciary capacity a return for any other person.

(c) Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor punishable as provided in Section 7153.

SEC. 2. Section 6454 of the Revenue and Taxation Code is amended to read:

6454. Except as provided in Sections 6479.3 and 6479.31, a person required to file the return shall deliver the return together with a remittance of the amount of the tax due to the office of the board.

SEC. 3. Section 6479.3 of the Revenue and Taxation Code is amended to read:

6479.3. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board. Any person who collects use tax on a voluntary basis is not required to remit amounts due by electronic funds transfer.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars ($20,000) per month or any person who voluntarily collects use tax may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the

due dates set forth in Article 1 (commencing with Section 6451) and Article 1.1 (commencing with Section 6470). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) (1) Except as provided in paragraph (2), any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(2) A person required to remit prepayments pursuant to this article who remits a prepayment by means other than an appropriate electronic funds transfer shall pay a penalty of 6 percent of the prepayment amount incorrectly remitted.

(f) Except as provided in Sections 6476 and 6477, any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 6481) or Article 3 (commencing with Section 6511), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars ($20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) Except as provided in subdivision (i), the penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due, exclusive of prepayments, for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 6591.

(i) The penalties imposed with respect to paragraph (2) of subdivision (e) and Sections 6476 and 6477 shall be limited to a maximum of 6 percent of the prepayment amount.

(j) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 3.5. Section 6479.31 is added to the Revenue and Taxation Code, to read:

6479.31. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be in a form as the board may prescribe and is not complete, and therefore not filed, unless an electronic filing declaration is signed by the taxpayer. The board may prescribe forms and instructions for requiring the electronic filing declaration to be retained by the preparer or taxpayer and may require the declaration to be furnished to the board upon request.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

(d) Unless remittance is made pursuant to Section 6479.3, a person filing any return under this section shall deliver remittance of the amount of the tax due to the office of the board, along with a voucher in a form prescribed by the board, on or before the date the return is required to be filed.

SEC. 4. Section 6480.1 of the Revenue and Taxation Code is amended to read:

6480.1. (a) After service of written notification by the board, on any distribution in this state of motor vehicle fuel subject to the motor vehicle fuel license tax, the distributor shall collect prepayment of retail sales tax from the person to whom the motor vehicle fuel is distributed. The prepayment required to be collected by the distributor constitutes a debt owed by the distributor to this state until paid to the board, until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the retail sales tax to the board, or until a distributor or broker who has consumed the fuel has paid the use tax to the board. Each distributor shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is distributed. On each subsequent distribution of that motor vehicle fuel, each seller, other than the retailer, shall collect from his or her purchaser a prepayment computed using the rate applicable at the time of distribution. Each distributor shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts which shall be separately stated thereon.

(b) After service of written notification by the board, the broker shall collect prepayment of the retail sales tax from the person to

whom the motor vehicle fuel is transferred. The prepayment required to be collected by the broker constitutes a debt owed by the broker to the state until paid to the board, or until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the tax to the board. Each broker shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts which shall be separately stated thereon.

Each broker shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is distributed. The amount of prepayment paid by the broker to his or her vendor shall constitute a credit against the amount of prepayment required to be collected and remitted by the broker to the board.

(c) A distributor or broker who pays the prepayment and issues a resale certificate to the seller, but subsequently consumes the fuel, shall be entitled to a credit against his or her sales and use taxes due and payable for the period in which the prepayment was made, provided that he or she reports and pays the use tax to the board on the consumption of that fuel.

(d) The amount of a prepayment paid by the retailer or a distributor or broker who has consumed the fuel to the seller from whom he or she acquired the fuel shall constitute a credit against his or her sales and use taxes due and payable for the period in which the distribution was made. Failure of the distributor or broker to report prepayments or the distributor's or broker's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, distributor, or broker, either on a temporary or permanent basis or otherwise. The retailer, distributor, or broker shall be entitled to the credit to the extent of the amount prepaid to his or her supplier as evidenced by purchase documents, invoices, or receipts stating separately the amount of tax prepayment.

(e) The rate of the prepayment required to be collected during the period from July 1, 1986, through March 31, 1987, shall be four cents ($0.04) per gallon of motor vehicle fuel distributed or transferred.

(f) On April 1 of each succeeding year, the rate per gallon, rounded to the nearest one-half of one cent, of the required prepayment shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, and 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales tax) as determined by the State Energy Resources Conservation and Development Commission, in its latest publication of the "Quarterly Oil Report," of all grades of gasoline sold through a self-service gasoline station. In the event the "Quarterly Oil Report" is delayed or discontinued, the board may base its determination on other sources of the arithmetic average selling

price of gasoline. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every distributor, broker, and retailer of motor vehicle fuel. In the event the price of fuel decreases or increases, and the established rate results in prepayments which consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

SEC. 4.2. Section 6480.6 of the Revenue and Taxation Code is amended to read:

6480.6. (a) The following persons who have paid prepayment amounts either directly to the board or to the person from whom it was purchased, on the distribution of motor vehicle fuel which was subject to the motor vehicle fuel license tax, shall be refunded those amounts:

(1) Any person who exports the motor vehicle fuel for subsequent sale outside this state.

(2) Any person who sells the motor vehicle fuel which is exempt from the sales or use tax pursuant to Sections 6352, 6357, 6381, and 6396.

(3) Any person who has lost the motor vehicle fuel through fire, flood, theft, leakage, evaporation, shrinkage, spillage, or accident, prior to any retail sale.

(4) Any person who is unable to collect the prepayment from the purchaser insofar as the sales of the fuel are represented by accounts which have been found to be worthless and charged off for income tax purposes. If partial payments have been made, the payments shall be prorated between amounts due for fuel and amounts due for the related prepayment. If any of those accounts are thereafter in whole or in part collected by the seller, the gallons of fuel represented by the amounts collected shall be included in the first return filed after that collection and the amount of the prepayment thereon paid with the return. As a condition for eligibility for refund, the board may require the seller to submit periodical reports listing accounts delinquent for a 90-day period or over.

(5) Any person who is licensed under Section 7451 and is authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401, who purchases the motor vehicle fuel from a person who is not authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401.

(b) In lieu of a refund, the board may authorize a credit to be taken by the person to whom the refund is due upon his or her prepayment form or sales and use tax return.

SEC. 4.4. Section 6480.16 of the Revenue and Taxation Code is amended to read:

6480.16. (a) After service of written notification by the board, the producer or importer shall collect prepayment of retail sales tax from the person to whom fuel is first sold in this state. The prepayment required to be collected by the producer or importer constitutes a debt owed by the producer or importer to the state until paid to the board, until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the retail sales tax to the board, or until a producer or importer who has consumed the fuel has paid the use tax to the board. Each producer or importer shall report and pay the prepayment amounts to the board on a form prescribed by the board in the period in which the fuel is sold. On each subsequent sale of that fuel, each seller, other than the retailer, shall collect from his or her purchaser a prepayment computed using the rate applicable at the time of sale. Each seller shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts that shall be separately stated thereon.

(b) After service of written notification by the board, the jobber shall collect prepayment of the retail sales tax from the person to whom the fuel is sold. The prepayment required to be collected by the jobber constitutes a debt owed by the jobber to the state until paid to the board, or until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the tax to the board. Each jobber shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts, and the amounts shall be separately stated thereon.

Each jobber shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is sold. The amount of prepayment paid by the jobber to his or her vendor shall constitute a credit against the amount of prepayment required to be collected and remitted by the jobber to the board.

(c) A producer, importer, or jobber who pays the prepayment and issues a resale certificate to the seller, but subsequently consumes the fuel, shall be entitled to a credit against his or her sales and use taxes due and payable for the period in which the prepayment was made, provided that he or she reports and pays the use tax to the board on the consumption of that fuel.

(d) The amount of a prepayment paid by the retailer or a producer, importer, or jobber who has consumed the fuel, to the seller from whom he or she acquired the fuel shall constitute a credit against his or her sales and use taxes due and payable for the period in which the sales were made. Failure of the producer, importer, or jobber to report prepayments or the producer's, importer's, or jobber's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, producer, importer, or jobber, either on a temporary or permanent basis or otherwise. The retailer, producer, importer, or jobber shall be entitled to the credit to the extent of the amount prepaid to his

or her supplier as evidenced by purchase documents, invoices, or receipts stating separately the amount of tax prepayment.

(e) On April 1 of each succeeding year, the prepayment rate per gallon for aircraft jet fuel rounded to the nearest one-half of one cent ($0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, and 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. The rate of the prepayment required to be collected for aircraft jet fuel shall be equal to 80 percent of the arithmetic average selling price of jet fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every producer, importer, jobber, and retailer of fuel. In the event the price of fuel decreases or increases, and the established rate results in prepayments that consistently exceed established rate results or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(f) On April 1 of each succeeding year, the prepayment rate per gallon for diesel fuel rounded to the nearest one-half of one cent ($0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, and 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. The rate of the prepayment required to be collected for diesel fuel and other qualifying fuels shall be equal to 80 percent of the arithmetic average selling price of diesel fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every producer, importer, jobber, and retailer of fuel. In the event the price of fuel decreases or increases, and the established rate results in prepayments that consistently exceed established rate results or are significantly lower than the retailers' sales tax liability, the board may readjust the rate. Notwithstanding any other provision of this section, sales or exchanges of fuel between those persons exempt from license taxes pursuant to paragraph (3) of subdivision (a) of Section 7401 shall be exempt from prepayment of sales tax.

SEC. 5. Section 6592 of the Revenue and Taxation Code is amended to read:

6592. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances

beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the penalties provided by Sections 6476, 6477, 6479.3, 6480.4, 6480.8, 6511, 6565, 6591, and 7051.2.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 6. Section 7273 of the Revenue and Taxation Code is amended to read:

7273. In addition to the amounts otherwise provided for preparatory costs, the board shall charge an amount for its services in administering the transactions and use tax determined by the board, with the concurrence of the Department of Finance, as follows:

(a) Beginning with the 1993–94 fiscal year, the amount charged shall be based on the total special taxing jurisdiction costs reflected in the annual Budget Act. This amount comprises the categories of direct, shared, and central agency costs incurred by the board and shall include the following:

(1) The amount charged to each entity shall be based on the recommendations incorporated in the March 1992, report by the Auditor General entitled "The Board of Equalization Needs To Adjust Its Model For Setting Reimbursement Rates For Special Tax Jurisdictions."

(2) The amount charged may be adjusted in the current fiscal year to reflect the difference between the board's budgeted costs and any significant revised estimate of costs. Any adjustment shall be subject to budgetary controls included in the Budget Act. Prior to any adjustment, the Department of Finance shall notify the Chairperson of the Joint Legislative Budget Committee not later than 30 days prior to the effective date of the adjustment.

(3) For the 1995–96 fiscal year and each fiscal year thereafter, the amount charged shall be adjusted to reflect the difference between the board's recovered costs and the actual costs incurred by the board during the fiscal year two years prior.

(b) The board shall, by June 1 of each year, notify districts of the amount that it anticipates will be assessed for the next fiscal year. The districts shall be notified of the actual amounts that will be assessed within 30 days after enactment of the Budget Act for that fiscal year.

(c) The amount charged a transactions and use tax district that becomes operative during the fiscal year shall be estimated for that fiscal year based on that district's proportionate share of direct, indirect, and shared costs.

(d) The amounts determined by subdivision (a) shall be deducted in equal amounts from the quarterly allocation of taxes collected by the board for a given district.

(e) For the 1998–99 fiscal year and each fiscal year thereafter, the amount charged to a district by the board shall not exceed the lesser

of the amount as a percentage of revenue the board would have charged for the 1998–99 fiscal year, or the first full year of a new district's operations under this section as it read prior to the amendments made by the act adding this subdivision, or the following percentages:

(1) For districts imposing a transactions and use tax of one-half of 1 percent or greater, the amount charged by the board shall not exceed 1.5 percent, for the 1998–99 fiscal year and each fiscal year thereafter.

(2) Beginning with the 1998–99 fiscal year and in each fiscal year thereafter, the amount charged to a district imposing a transactions and use tax ranging from one-quarter of 1 percent up to but less than one-half of 1 percent shall not exceed 3 percent.

(3) Beginning with the 1998–99 fiscal year and in each fiscal year thereafter, the amount charged to a district imposing a transactions and use tax below one-quarter of 1 percent shall not exceed 5 percent.

(f) The board shall report to the Chairperson of the Senate Committee on Budget and Fiscal Review and the Chairperson of the Assembly Committee on Budget by March 1, 1999, and January 1, 2000, on the actions the board will take to adjust its costs commensurate with the changes in reimbursements effected by this bill. The report shall analyze the impact of the reduced reimbursements on the board's budget and how the board's actions may impact its revenue-producing activities. The board may not reduce positions that are responsible for the generation or receipt of revenues, including, but not limited to, positions in the audits and compliance programs.

SEC. 7. Section 7354 of the Revenue and Taxation Code is amended to read:

7354. The license tax shall be imposed upon only one distribution of the same motor vehicle fuel, except where a refund or credit has been allowed pursuant to subdivision (f) of Section 8101 or Section 8106.7, and except as may otherwise be provided in this part.

In determining the value of the motor vehicle fuel for any and all taxes according to value, there shall be excluded from the value the amount of motor vehicle fuel tax imposed.

SEC. 8. Section 8101 of the Revenue and Taxation Code is amended to read:

8101. The following persons who have paid a license tax for motor vehicle fuel, either directly or to the vendor from whom it was purchased, or indirectly by the adding of the amount of the tax to the price of the fuel, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax:

(a) Any person who buys and uses the motor vehicle fuel for purposes other than operating motor vehicles upon the public highways of the state, except vehicles subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, which are used for recreational purposes or are rented or leased for

recreational purposes, and, on and after July 1, 1974, except motor vehicles subject to registration under Division 3 (commencing with Section 4000) of the Vehicle Code while engaged in off-highway recreational use.

(b) Any person who exports the motor vehicle fuel for use outside of this state. Motor vehicle fuel carried from this state in the fuel tank of a motor vehicle is not deemed to be exported from this state unless the motor vehicle fuel becomes subject to tax as an "import" under the laws of the destination state.

(c) Any person who sells the motor vehicle fuel to the armed forces of the United States for use in ships or aircraft or for use outside this state, under circumstances that would have entitled him or her to an exemption from the payment of the license tax under Section 7401 had he or she been the distributor of this fuel.

(d) Any person who buys and uses the motor vehicle fuel in any construction equipment which is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(e) Any distributor who sells motor vehicle fuel which is sold to any consulate officer or consulate employee under circumstances which would have entitled the distributor to an exemption under paragraph (6) of subdivision (a) of Section 7401 if the distributor had sold the motor vehicle fuel directly to the consulate officer or consulate employee.

(f) Any distributor who is licensed under Section 7451 and is authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401, who acquires the motor vehicle fuel from a distributor who is not authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401.

SEC. 9. Section 8106.7 is added to the Revenue and Taxation Code, to read:

8106.7. In lieu of the collection and refund of the tax on motor vehicle fuel purchased by a licensed distributor who is entitled to claim a refund of tax under subdivision (f) of Section 8101, credit may be given the distributor upon his or her tax return and the determination of the amount of his or her tax in accordance with those rules and regulations as the board may prescribe.

SEC. 10. Section 8127.6 is added to the Revenue and Taxation Code, to read:

8127.6. A distributor who is licensed under Section 7451 and is authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401, and who paid tax reimbursement to a distributor who is not authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401, may not seek tax reimbursement from another distributor who is authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph

(3) of subdivision (a) of Section 7401. However, the distributor may seek a refund, pursuant to subdivision (f) of Section 8101, of the tax reimbursement it paid to the distributor who is not authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 866

An act to amend Section 2942 of the Probate Code, relating to courts.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 2942 of the Probate Code is amended to read:

2942. The public guardian shall be paid from the estate of the ward or conservatee for all of the following:

(a) Reasonable expenses incurred in the execution of the guardianship or conservatorship.

(b) Compensation for services of the public guardian and the attorney of the public guardian, and for the filing and processing services of the county clerk or the clerk of the superior court, in the amount the court determines is just and reasonable. In determining what constitutes just and reasonable compensation, the court shall, among other factors, take into consideration the actual costs of the services provided, the amount of the estate involved, the special value of services provided in relation to the estate, and whether the compensation requested might impose an economic hardship on the estate. Nothing in this section shall require a public guardian to base a request for compensation upon an hourly rate of service.

(c) An annual bond fee in the amount of twenty-five dollars ($25) plus one-fourth of 1 percent of the amount of an estate greater than ten thousand dollars ($10,000). The amount charged shall be deposited in the county treasury. This subdivision does not apply if

the ward or conservatee is eligible for Social Security Supplemental Income benefits.

CHAPTER 867

An act to add Section 3135 to, and to repeal and add Part 3 (commencing with Section 3400) of Division 8 of, the Family Code, relating to child custody.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 3135 is added to the Family Code, to read:

3135. Part 3 (commencing with Section 3400) does not limit the authority of a district attorney or arresting agency to act pursuant to this chapter, Section 279.6 of the Penal Code, or any other applicable law.

SEC. 2. Part 3 (commencing with Section 3400) of Division 8 of the Family Code is repealed.

SEC. 3. Part 3 (commencing with Section 3400) is added to Division 8 of the Family Code, to read:

PART 3. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

CHAPTER 1. GENERAL PROVISIONS

3400. This part may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act.

3402. As used in this part:

(a) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(b) "Child" means an individual who has not attained 18 years of age.

(c) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(d) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, legal separation of the parties, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and

protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Chapter 3 (commencing with Section 3441).

(e) "Commencement" means the filing of the first pleading in a proceeding.

(f) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(g) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(h) "Initial determination" means the first child custody determination concerning a particular child.

(i) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this part.

(j) "Issuing state" means the state in which a child custody determination is made.

(k) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(*l*) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(m) "Person acting as a parent" means a person, other than a parent, who: (1) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and (2) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(n) "Physical custody" means the physical care and supervision of a child.

(o) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(p) "Tribe" means an Indian tribe or band, or Alaskan Native village, that is recognized by federal law or formally acknowledged by a state.

(q) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

3403. This part does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

3404. (a) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) is not subject to this part to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying this chapter and Chapter 2 (commencing with Section 3421).

(c) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this part must be recognized and enforced under Chapter 3 (commencing with Section 3441).

3405. (a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this chapter and Chapter 2 (commencing with Section 3421).

(b) Except as otherwise provided in subdivision (c), a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this part must be recognized and enforced under Chapter 3 (commencing with Section 3441).

(c) A court of this state need not apply this part if the child custody law of a foreign country violates fundamental principles of human rights.

3406. A child custody determination made by a court of this state that had jurisdiction under this part binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 3408 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

3407. If a question of existence or exercise of jurisdiction under this part is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

3408. (a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

3409. (a) A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subdivision (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this part committed by an individual while present in this state.

3410. (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this part.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subdivision (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "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.

3411. (a) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court, on its own motion, may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an

original writing may not be excluded from evidence on an objection based on the means of transmission.

3412. (a) A court of this state may request the appropriate court of another state to do all of the following:

(1) Hold an evidentiary hearing.

(2) Order a person to produce or give evidence pursuant to procedures of that state.

(3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding.

(4) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request.

(5) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subdivision (a).

(c) Travel and other necessary and reasonable expenses incurred under subdivisions (a) and (b) may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

CHAPTER 2. JURISDICTION

3421. (a) Except as otherwise provided in Section 3424, a court of this state has jurisdiction to make an initial child custody determination only if any of the following are true:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

(2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true:

(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

(B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

(3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 3427 or 3428.

(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

(b) Subdivision (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

3422. (a) Except as otherwise provided in Section 3424, a court of this state that has made a child custody determination consistent with Section 3421 or 3423 has exclusive, continuing jurisdiction over the determination until either of the following occurs:

(1) A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships.

(2) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(b) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 3421.

3423. Except as otherwise provided in Section 3424, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under paragraph (1) or (2) of subdivision (a) of Section 3421 and either of the following determinations is made:

(a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 3422 or that a court of this state would be a more convenient forum under Section 3427.

(b) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

3424. (a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse.

(b) If there is no previous child custody determination that is entitled to be enforced under this part and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section remains in effect until an

order is obtained from a court of a state having jurisdiction under Sections 3421 to 3423, inclusive. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this part, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 3421 to 3423, inclusive. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 3421 to 3423, inclusive, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

(e) It is the intent of the Legislature in enacting subdivision (a) that the grounds on which a court may exercise temporary emergency jurisdiction be expanded. It is further the intent of the Legislature that these grounds include those that existed under Section 3403 of the Family Code as that section read on December 31, 1999, particularly including cases involving domestic violence.

3425. (a) Before a child custody determination is made under this part, notice and an opportunity to be heard in accordance with the standards of Section 3428 must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This part does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this part are governed by the law of this state as in child custody proceedings between residents of this state.

3426. (a) Except as otherwise provided in Section 3424, a court of this state may not exercise its jurisdiction under this chapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this part, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 3427.

(b) Except as otherwise provided in Section 3424, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 3429. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this part, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this part does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may do any of the following:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement.

(2) Enjoin the parties from continuing with the proceeding for enforcement.

(3) Proceed with the modification under conditions it considers appropriate.

3427. (a) A court of this state that has jurisdiction under this part to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.

(2) The length of time the child has resided outside this state.

(3) The distance between the court in this state and the court in the state that would assume jurisdiction.

(4) The degree of financial hardship to the parties in litigating in one forum over the other.

(5) Any agreement of the parties as to which state should assume jurisdiction.

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child.

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this part if a child custody determination is incidental to an action for dissolution of marriage or another proceeding while still retaining jurisdiction over the dissolution of marriage or other proceeding.

(e) If it appears to the court that it is clearly an inappropriate forum, the court may require the party who commenced the proceeding to pay, in addition to the costs of the proceeding in this state, necessary travel and other expenses, including attorney's fees, incurred by the other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

3428. (a) Except as otherwise provided in Section 3424 or by any other law of this state, if a court of this state has jurisdiction under this part because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless one of the following are true:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction.

(2) A court of the state otherwise having jurisdiction under Sections 3421 to 3423, inclusive, determines that this state is a more appropriate forum under Section 3427.

(3) No court of any other state would have jurisdiction under the criteria specified in Sections 3421 to 3423, inclusive.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subdivision (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 3421 to 3423, inclusive.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subdivision (a), it shall

assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this part.

(d) In making a determination under this section, a court shall not consider as a factor weighing against the petitioner any taking of the child, or retention of the child after a visit or other temporary relinquishment of physical custody, from the person who has legal custody, if there is evidence that the taking or retention of the child was a result of domestic violence against the petitioner, as defined in Section 6211.

3429. (a) In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. However, where there are allegations of domestic violence or child abuse, any addresses of the party alleging violence or abuse and of the child which are unknown to the other party are confidential and may not be disclosed in the pleading or affidavit. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of, or visitation with, the child and, if so, identify the court, the case number, and the date of the child custody determination, if any.

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding.

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subdivision (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in paragraphs (1) to (3), inclusive, of subdivision (a) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other

matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

3430. (a) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Section 3408 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child custody proceeding who is outside this state is directed to appear under subdivision (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

CHAPTER 3. ENFORCEMENT

3441. In this chapter:

(a) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(b) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

3442. Under this chapter, a court of this state may enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

3443. (a) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this part or the determination was made under factual circumstances meeting the jurisdictional standards of this part and the determination has not been modified in accordance with this part.

(b) A court of this state may utilize any remedy available under other laws of this state to enforce a child custody determination made by a court of another state. The remedies provided in this chapter are

cumulative and do not affect the availability of other remedies to enforce a child custody determination.

3444. (a) A court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing either:

(1) A visitation schedule made by a court of another state.

(2) The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under paragraph (2) of subdivision (a), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Chapter 2 (commencing with Section 3421). The order remains in effect until an order is obtained from the other court or the period expires.

3445. (a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending all of the following to the appropriate court in this state:

(1) A letter or other document requesting registration.

(2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified.

(3) Except as otherwise provided in Section 3429, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(b) On receipt of the documents required by subdivision (a), the registering court shall do both of the following:

(1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.

(2) Serve notice upon the persons named pursuant to paragraph (3) of subdivision (a) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by paragraph (2) of subdivision (b) shall state all of the following:

(1) That a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state.

(2) That a hearing to contest the validity of the registered determination must be requested within 20 days after service of the notice.

(3) That failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes any of the following:

(1) That the issuing court did not have jurisdiction under Chapter 2 (commencing with Section 3421).

(2) That the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Chapter 2 (commencing with Section 3421).

(3) That the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 3408, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served shall be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

3446. (a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with Chapter 2 (commencing with Section 3421), a registered child custody determination of a court of another state.

3447. If a proceeding for enforcement under this chapter is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Chapter 2 (commencing with Section 3421), the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

3448. (a) A petition under this chapter must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child custody determination must state all of the following:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was.

(2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must

be enforced under this part and, if so, identify the court, the case number, and the nature of the proceeding.

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding.

(4) The present physical address of the child and the respondent, if known.

(5) Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought.

(6) If the child custody determination has been registered and confirmed under Section 3445, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subdivision (c) must state the time and place of the hearing and advise the respondent that, at the hearing, the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under Section 3452, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes either of the following:

(1) That the child custody determination has not been registered and confirmed under Section 3445 and all of the following are true:

(A) The issuing court did not have jurisdiction under Chapter 2 (commencing with Section 3421).

(B) The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Chapter 2 (commencing with Section 3421).

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of Section 3408, in the proceedings before the court that issued the order for which enforcement is sought.

(2) That the child custody determination for which enforcement is sought was registered and confirmed under Section 3444, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Chapter 2 (commencing with Section 3421).

3449. Except as otherwise provided in Section 3451, the petition and order shall be served, by any method authorized by the law of

this state, upon the respondent and any person who has physical custody of the child.

3450. (a) Unless the court issues a temporary emergency order pursuant to Section 3424, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes either of the following:

(1) That the child custody determination has not been registered and confirmed under Section 3445 and one of the following is true:

(A) The issuing court did not have jurisdiction under Chapter 2 (commencing with Section 3421).

(B) The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Chapter 2 (commencing with Section 3421).

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of Section 3408, in the proceedings before the court that issued the order for which enforcement is sought.

(2) That the child custody determination for which enforcement is sought was registered and confirmed under Section 3445 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Chapter 2 (commencing with Section 3421).

(b) The court shall award the fees, costs, and expenses authorized under Section 3452 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this chapter.

3451. (a) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first

judicial day possible. The application for the warrant must include the statements required by subdivision (b) of Section 3448.

(c) A warrant to take physical custody of a child must do all of the following:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based.

(2) Direct law enforcement officers to take physical custody of the child immediately.

(3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

3452. (a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this part.

3453. A court of this state shall accord full faith and credit to an order issued by another state, and consistent with this part, enforce a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Chapter 2 (commencing with Section 3421).

3454. An appeal may be taken from a final order in a proceeding under this chapter in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 3424, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

3455. (a) In a case arising under this part or involving the Hague Convention on the Civil Aspects of International Child Abduction, a district attorney is authorized to proceed pursuant to Chapter 8 (commencing with Section 3130) of Part 2.

(b) A district attorney acting under this section acts on behalf of the court and may not represent any party.

3456. At the request of a district attorney acting under Section 3455, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist the district attorney with responsibilities under Section 3455.

3457. The court may assess all direct expenses and costs incurred by a district attorney under Section 3455 or 3456 pursuant to the provisions of Section 3134.

CHAPTER 4. MISCELLANEOUS PROVISIONS

3461. In applying and construing this Uniform Child Custody Jurisdiction and Enforcement Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

3462. If any provision of this part or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part that can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

3465. A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination that was commenced before the effective date of this part is governed by the law in effect at the time the motion or other request was made.

SEC. 4. The Judicial Council shall report to the Legislature by January 1, 2003, on the effect of the implementation of the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code) in this state. The report shall include, among other relevant information, the number of states that have adopted the act and any evidence of other states failing to recognize or enforce California custody orders issued under the act. To assist in completing this study, the Judicial Council shall consult with family law judges, custodial and noncustodial parents' organizations, domestic violence organizations, district attorneys, nonprofit family law providers, and legal aid organizations.

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

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of

the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 868

An act to amend Sections 1033, 11535.1, 11537.3, and 11538 of, to add Section 10489.94 to, and to repeal Section 10509.976 of, the Insurance Code, relating to insurance.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1033 of the Insurance Code is amended to read:

1033. (a) Claims allowed in a proceeding under this article shall be given preference in the following order:

(1) Expense of administration.

(2) All claims of the California Insurance Guarantee Association or the California Life and Health Insurance Guarantee Association, and associations or entities performing a similar function in other states, together with claims for refund of unearned premiums and all claims under insurance and annuity policies or contracts, including funding agreements, of an insolvent insurer that are not covered claims.

The following claims are excluded from this priority:

(A) Any obligations of the insolvent insurer arising out of any reinsurance contracts, as well as obligations incurred after the expiration date of the policy or after the insurance policy has been replaced by the insured or canceled at the insured's request, or after the policy has been canceled by the California Insurance Guarantee Association, the California Life and Health Insurance Guarantee Association, or another association or entity performing a similar function in another state.

(B) Any obligations to insurers, insurance pools, or underwriting associations, and their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.

(C) Any amount awarded as punitive or exemplary damages, and any damages in excess of the liability limits of the policies or contracts that represent damages for contractual bad faith.

(D) Any amount that is a surplus deposit of a subscriber as defined in Section 1374.1.

(E) Any judgments against or obligations or liabilities of the insolvent insurer otherwise arising from alleged or proven torts, and

any default, collusive, or stipulated judgment against either the insured or the person subject to proceedings under this article, as well as any judgment taken in violation of Section 1020. Nothing in this subparagraph shall prohibit the commissioner from considering the underlying claims as a claim entitled to priority under this section, provided that the claimant shall provide to the commissioner a written election that the judgment shall in all things be disregarded in determining the liability for and valuation of the underlying claim.

(F) Any loss adjustment expenses, including adjustment fees and expenses, attorneys' fees and expenses, court costs, interest, bond premiums, expert witness fees, and other claims of a similar nature incurred prior to the appointment of a liquidator.

(G) Claims arising from any self-insured program of the insurer, including employee life, health and annuity plans, and self-funded employee benefit plans, however denominated, as well as claims arising from a multiple employer welfare arrangement as defined in Section 514 of the federal Employee Retirement Income Security Act of 1974, as amended, a minimum premium group insurance plan, a stop-loss group insurance plan, or an administrative services-only plan.

(H) Any portion of a policy or contract to the extent that it provides experience rating credits or refunds, dividends, or for the payment of fees or allowances to any person, including the policyholder or contractholder, in connection with the service to or administration of the policy or contract.

(I) Any annuity issued by a charitable organization for which the person subject to these proceedings did not have or utilize a certificate of authority to issue the policy or contract.

(3) Claims having preference by the laws of the United States.

(4) Unpaid charges due under the provisions of Section 736.

(5) Taxes due to the State of California.

(6) Claims having preference by the laws of this state.

(7) Claims of creditors not included in paragraphs (1) to (6), inclusive.

(8) Certificates of contribution, surplus notes, or similar obligations, and premium refunds on assessable policies.

(9) The interests of shareholders or other owners in any residual value in the estate.

(b) (1) Every claim allowed under a separate account policy, contract, or agreement providing, in effect, that the assets allocated to the separate account are not chargeable with liabilities arising out of any other business of the insurer, shall be satisfied out of the assets properly allocated to and maintained in the separate account, excluding amounts allocated or transferred to the separate account by the insurer pursuant to subdivision (b) of Section 10506, equal to the reserves maintained in the separate account for the policies, contracts, or agreements. No liabilities of the insurer arising out of any other business of the insurer shall be satisfied from assets

properly allocated to and maintained in a separate account except (A) from amounts allocated or transferred to the separate account pursuant to subdivision (b) of Section 10506 and (B) from any assets allocated to the separate account that exceed the reserves under the separate account policies, contracts, or agreements. For the purposes of this subdivision, "separate account policies, contracts, or agreements" means any policies, contracts, or agreements that provide for separate accounts as contemplated by Section 10506, 10506.3, 10506.4, or 10541. Any valid and allowed claim for contractual benefits that cannot be satisfied out of the assets properly allocated to and maintained in a separate account for obligations authorized by subdivision (a) of Section 10506.3 shall be included as a claim against the general account within paragraph (2) of subdivision (a). Any valid and allowed claim against the general account for contractual benefits under an obligation authorized by Section 10506.4 shall be included as a claim within paragraph (2) of subdivision (a).

(2) Notwithstanding any other provision of law, to the extent that any assets of a life insurer, other than those assets properly allocated to, and maintained in, a separate account, have been used to fund or pay any expenses, taxes, or policyholder benefits that are attributable to a separate account policy, contract, or agreement that should have been paid by a separate account prior to the commencement of delinquency proceedings, then upon the commencement of delinquency proceedings, the separate accounts that benefited from this payment or funding shall first be used to repay or reimburse the company's general assets or account for any unreimbursed net sums due at the commencement of delinquency proceedings prior to the application of the separate account assets to the satisfaction of liabilities of the corresponding separate account policies, contracts, and agreements.

(c) Upon the issuance of an order appointing a conservator or liquidator for any person under either Section 1011 or 1016 or both these sections, the lien of taxes due to the State of California imposed by Article 4 (commencing with Section 12491) of Chapter 4 of Part 7 of Division 2 of the Revenue and Taxation Code shall become subordinate to the reasonable administrative expenses of the proceeding under the order.

(d) The following definitions are for purposes of this section only and shall not be used to determine coverage under the California Life and Health Insurance Guarantee Association Act (Article 14.7 (commencing with Section 1067)):

(1) "Funding agreements" means those agreements authorized to be delivered or issued pursuant to Section 10541.

(2) "Annuity" means only those annuity contracts, including period-certain annuities issued by a life insurer, that require for their lawful issuance a certificate of authority from the commissioner, and excludes without limitation all instruments for which the commissioner's certificate of authority is not required, such as

promissory notes, installment loans, negotiable instruments, mortgages, and debentures.

(3) Reinsurance contracts shall not be included as insurance or annuity policies or contracts, or funding agreements. However, any insurance or annuity policy or contract, including any funding agreement, that is assumed by an insurer under an assumption reinsurance agreement pursuant to a plan of liquidation, rehabilitation, or reorganization shall, unless the plan provided otherwise, be deemed to retain the issue date of the original insurance or annuity policy or contract, or funding agreement that is assumed.

(e) The provisions of this section are severable. If any portion of this section is held invalid or is preempted by federal law, the remainder of the section and its application shall not be affected. Specifically, should any of paragraphs (1) to (6), inclusive, of subdivision (a) be held to be invalid or preempted by federal law, the claims included within the invalid paragraph shall be included within paragraph (7) of subdivision (a), and the remaining paragraphs shall not be affected thereby.

(f) No payment shall be made to any creditor in paragraphs (8) or (9) of subdivision (a), unless all claims in paragraphs (3) to (7), inclusive, of subdivision (a) have been paid in full, together with interest at the legal rate of the date of the order commencing the proceeding or the date on which the claim became liquidated, whichever date is later. In proceedings involving life insurance companies, no payment shall be made for any claim in paragraph (7), (8), or (9) of subdivision (a) unless and until all claims in paragraph (1) of subdivision (a) have been paid in full, together with interest at the legal rate, all claims in paragraph (2) of subdivision (a) have been paid the full value of the policy or contract upon which the claim is based, as of the time of distribution to claimants, and all claims in paragraphs (3) to (6), inclusive, of subdivision (a) have been paid in full, together with interest at the legal rate from the date of the order commencing the proceeding. Notwithstanding the provisions of this subdivision, no payment of interest shall be made to any insurance guaranty association that receives early access disbursements from the estate pursuant to Section 1035.5.

SEC. 2. Section 11535.1 of the Insurance Code is amended to read:

11535.1. The definitions in this section apply to the following terms when used in this chapter.

(a) "Adoption date" means the date the board of directors adopts the plan of conversion.

(b) "Converted company" means the converted insurer or converted mutual holding company, as the case may be.

(c) "Converted insurer" means the incorporated stock insurer into which a mutual insurer has been converted or merged or redomiciled in accordance with the provisions of this chapter.

(d) "Converted mutual holding company" means the stock corporation into which a mutual holding company has been converted in accordance with this chapter.

(e) "Converting mutual life company" means, for a plan of conversion under this chapter, the mutual life insurer or mutual holding company that is converting under such a plan.

(f) "Effective date" means, for the conversion of a mutual life insurer, the date upon which the conversion of the mutual life insurer is effective, as specified in the commissioner's amendment to the mutual life insurer's certificate of authority issued in accordance with Section 11542, as a result of conversion proceedings under this chapter. For the conversion of a mutual holding company, "effective date" means the date upon which the conversion of a mutual holding company is effective, as specified in the amended articles of incorporation of the mutual holding company filed with the Secretary of State in accordance with Section 11542, as a result of conversion proceedings under this chapter.

(g) "Eligible members" means, for the conversion of a mutual life insurer, the members of the mutual life insurer who are of record on the mutual life insurer's adoption date. For the conversion of a mutual holding company, "eligible members" means the members of the mutual holding company who are of record on the mutual holding company's adoption date.

(h) "Member" means a person who, by the records of the mutual company and by its articles of incorporation or bylaws, is deemed to be a holder of a membership interest in the mutual company. For a mutual life insurer, a plan of conversion may provide that the term "member" also includes a person who is the owner of a policy issued or assumed by an insurer, that, pursuant to court order, is to be merged into the converted company. On and after the effective date of a plan of conversion that creates a mutual holding company, the term "member" means a member of a mutual holding company, as provided in Section 11542.1.

(i) "Membership interests" means the interests of members arising under this code and the articles of incorporation and bylaws of the mutual company or otherwise by law. Membership interests include the right to vote for directors of the mutual company and the right to vote on any plan of merger, consolidation, reinsurance, or transfer of assets and liabilities of the mutual company. Membership interests do not include members' rights in surplus, if any.

(j) "Mutual company" means, in the case of a plan of conversion, the mutual life insurer, mutual property-casualty insurer, or mutual holding company that is converting pursuant to such plan.

(k) "Mutual holding company" means a corporation organized under the laws of this state subject to the General Corporation Law as set forth in the Corporations Code. The articles of incorporation of a mutual holding company shall contain provisions stating the following:

(1) It is a mutual holding company organized under this chapter.

(2) One purpose of the mutual holding company is to hold not less than 51 percent of the voting stock of a stock holding company, which in turn holds all of the voting stock of a converted life insurer.

(3) It is not authorized to issue voting stock.

(4) Its members have the rights specified in Section 11542.1 and in its articles of incorporation and bylaws.

(5) Its assets and liabilities are subject to inclusion in the estate of the converted insurer in any proceedings successfully prosecuted against the converted insurer under Article 14 (commencing with Section 1010) or Article 14.3 (commencing with Section 1064.1) of Chapter 1 of Part 2 of Division 1.

(*l*) "Mutual insurer" means, in the case of a plan of conversion under this chapter, the mutual life insurer or mutual property-casualty insurer that is converting pursuant to such plan.

(m) "Mutual life insurer" means a domestic incorporated mutual life insurer, or domestic mutual life and disability insurer, that issues nonassessable policies on a reserve basis.

(n) "Person" means an individual, partnership, firm, association, corporation, joint-stock company, limited liability company, trust, government or governmental agency, state or political subdivision of a state, public or private corporation, board, association, estate, trustee, or fiduciary, or any similar entity.

(o) "Plan of conversion" or "plan" means a plan adopted by a mutual company in compliance with this chapter.

(p) "Policy" means an individual or group policy of insurance issued by a life insurer. If a policy of a mutual life insurer takes a form other than an individual form but holders of certificates or other interests under the policy are treated by the mutual life insurer as if they were holders of individual policies, the mutual life insurer may provide in its plan of conversion under this chapter that such a certificate or other interest is deemed to be a policy and deem the holder of the certificate or other interest to be an owner of a policy. Such a provision shall be for the sole purpose of determining the rights, if any, of policyholders of the mutual life insurer to vote upon and receive consideration under the plan of conversion and may not affect the other voting rights and qualifications of members of the mutual life insurer.

(q) "Policyholder" means the holder of a policy other than a reinsurance contract.

(r) "Rights in surplus," for a mutual life insurer, means rights of members of the insurer to a return of that portion of the surplus that has not been apportioned or declared by the board of directors for policyholder dividends. "Rights in surplus" includes rights of members of the insurer to a distribution of surplus in liquidation or conservation of the insurer under this code, or in a dissolution or winding up. "Rights in surplus," for a mutual holding company, means rights of members of the company to a return of any surplus

that has not been apportioned or declared by its board of directors for member dividends. "Rights in surplus" includes rights of members of the mutual holding company to a distribution of surplus in liquidation or conservation of the insurer under this code, or in a dissolution or winding up. "Rights in surplus" does not include any right expressly conferred solely by the terms of an insurance policy.

(s) "Stock holding company" means a corporation authorized to issue one or more classes of capital stock, the corporate purposes of which include holding all of the voting stock in an insurer that has been converted from a mutual life insurer to a stock life insurer in proceedings under Section 11537.2 in which a mutual holding company is formed.

(t) "Voting stock" means securities of any class or any ownership interest having voting power for the election of directors, trustees, or management of a person, other than securities having voting power only because of the occurrence of a contingency. All references to a specified percentage of voting stock of any person mean securities having the specified percentage of the voting power in that person for the election of directors, trustees, or management of that person, other than securities having voting power only because of the occurrence of a contingency.

SEC. 3. Section 10489.94 is added to the Insurance Code, to read:

10489.94. (a) The Commissioner may issue a bulletin to provide tables of select mortality factors and rules for their use, rules concerning a minimum standard for the valuation of plans with nonlevel premiums of benefits, and rules concerning a minimum standard for the valuation of plans with secondary guarantees. The bulletin authorized by this subdivision shall have the same force and effect, and may be enforced by the commissioner to the same extent and degree, as regulations issued by the commissioner. The commissioner shall adopt regulations that shall supersede the bulletin authorized by this section no later than December 31, 2002.

(b) It is the intent of the Legislature that the bulletin described in subdivision (a) and the superseding regulations shall contain the provisions of the National Association of Insurance Commissioners Valuation of Life Insurance Model Regulation Number 830 as adopted in March of 1999.

SEC. 4. Section 10509.976 of the Insurance Code is repealed.

SEC. 5. Section 11537.3 of the Insurance Code is amended to read:

11537.3. A plan of conversion adopted by a converting mutual life company shall include the following:

(a) (1) The plan provides that each member's membership interests and rights in surplus are extinguished and each eligible member will receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of a corporation which will issue the subscription rights, or, in lieu thereof, shares of capital stock or other securities of the issuer, cash, premium credits, or credits to policy account values having an

aggregate value equal to the aggregate exercise price of the subscription rights that otherwise would have been allocated to the member. The issuer is either (A) the converted insurer, (B) a corporation, the voting stock of which is owned by the mutual life insurer or the mutual holding company, as the case may be, or by any other persons, that will acquire in the conversion all the voting stock of the converted insurer, or (C) a corporation, all of the voting stock of which is owned by the mutual holding company into which both the mutual holding company and the stock holding company will be merged.

(2) The subscription rights are allocated in whole shares among the eligible members. The subscription rights, capital stock, cash, premium credits, and credits to policy account values are allocated among the eligible members using a fair and equitable formula. This formula will either (A) allocate a fixed component per capita among eligible members (specifying how joint owners will be treated for this purpose) and allocate a variable component among eligible members in proportion to the cash value of policies held by them, or (B) allocate the subscription rights, capital stock, cash, or credits in any other manner that the commissioner may approve.

(b) The plan specifies or authorizes the board of directors of the converting mutual life company to set the expiration date of the subscription rights, if any, allocated by the plan. The exercise price per share of the subscription rights is 50 percent of the price per share at which the capital stock of the issuer is first offered to the public in the offering referred to in subdivision (d), as fixed at the time of the offering by the boards of directors of the converting mutual life company and the issuer or committees of the boards.

(c) The plan provides that any eligible member not exercising the subscription rights, if any, allocated to the member will instead receive alternative forms of consideration having an aggregate value equal to the aggregate exercise price of the subscription rights allocated to the member. The alternative forms of consideration may include shares of capital stock of the issuer, cash, premium credits, or credits to policy account values. The choices available to the eligible member shall be specified in the plan. The choices available may take into account the type of policy, size of policy, tax status of the member, and other factors that the commissioner determines are appropriate.

(d) The plan provides that the issuer will make a public offering of its capital stock at a price determined by the boards of directors of the converting mutual life company and the issuer. The number of shares to be offered is determined according to the plan and may include any shares issuable upon exercise of subscription rights that are not exercised. The plan may also provide for the issue and sale of securities of the issuer to other persons at the time of the public offering. However, any plan provisions pertaining to the issuance and sale of securities to the insurer's officers, directors, employees,

agents, and employee benefit plans for their benefit shall be subject to Section 11540.

(e) The plan of a mutual life insurer may provide for the establishment, for policyholder dividend purposes only, of a closed block. The closed block will consist of all of the participating individual policies of life insurance of the mutual life insurer in force on the effective date of the plan for which the insurer had an experience-based dividend scale payable in the year in which the plan is adopted. Assets of the insurer shall be allocated to the closed block in an amount that produces cash-flows, together with anticipated revenues from the closed block business, expected to be sufficient (1) to support the closed block business, including payment of claims and those expenses and taxes specified in the plan and (2) to provide for continuation of dividend scales in effect on the adoption date if the experience underlying the scales continues, and for appropriate adjustments in the scales if the experience changes. The plan may provide for conditions under which the converted insurer may cease to maintain the closed block and its allocated assets. Regardless of such a cessation, the obligation under the policies constituting the closed block business remain the obligations of the converted insurer. Dividends on those policies shall be apportioned by the board of directors of the converted insurer in accordance with the terms of the policies.

(f) In lieu of the provisions contemplated by subdivisions (a) to (d), inclusive, a plan may be adopted by a converting mutual life company that:

(1) Is fair and equitable to the members of the converting mutual life company and provides for consideration to the members having a value equal to or greater than the value of the consideration that would have been payable to the members pursuant to a plan of conversion contemplated by subdivisions (a) to (d), inclusive.

(2) Has been approved by a resolution of the majority of the board of directors that specifies the basis on which the board of directors of the converting mutual life company finds that adopting the plan of conversion under this subdivision meets the requirements of paragraph (1).

(3) Provides that each member's membership interests and rights in surplus are extinguished and each eligible member will receive, without payment by the member, consideration that is allocated among the eligible members using a fair and equitable formula. This formula will either (A) allocate a fixed component per capita among eligible members, specifying how joint owners will be treated for this purpose, and allocate a variable component among eligible members in proportion to the cash value of policies held by them, or (B) allocate the consideration in any other manner that the commissioner may approve.

(4) Provides that eligible members may receive one or more kinds of consideration, including shares of capital stock of the converting

mutual life company or shares of capital stock (or interests in shares of capital stock) of a corporation that, after the conversion, directly or indirectly, controls the converted insurer, cash, premium credits, or credits to pay policy account values, as set forth in the plan.

(5) Provides for either of the following:

(A) The conversion of the converting mutual life company into a domestic stock corporation.

(B) The conversion of the converting mutual life company by means of a merger (i) in the case of a mutual life insurer into a domestic stock corporation, provided the corporation has been issued a certificate of authority, or (ii) in the case of a converting mutual holding company into a domestic or foreign stock corporation, and, in the case of that merger:

(I) The merger and conversion shall be subject to the provisions of this chapter other than subdivisions (a) to (d), inclusive.

(II) Chapter 11 (commencing with Section 1100), Chapter 12 (commencing with Section 1200), and Chapter 13 (commencing with Section 1300), of Division 1 of the Corporations Code shall not apply to the converting mutual life company in the merger except that Section 1107 of the Corporations Code shall apply.

(III) The merger and conversion shall become effective upon the filing of appropriate instruments with the Secretary of State.

(6) The plan may also provide for the converted company, or a corporation that will directly or indirectly control the converted insurer after the conversion, to issue and sell its securities to other persons at the time of the conversion. Any plan provisions pertaining to the issuance and sale of securities to the insurer's officers, directors, employees, agents, and employee benefit plans for their benefit shall be subject to Section 11540.

SEC. 6. Section 11538 of the Insurance Code is amended to read:

11538. (a) The commissioner shall examine the plan submitted pursuant to subdivision (b) of Section 11536. As a part of the examination the commissioner may order a hearing on the plan after written notice of the hearing to the mutual company, and its members, all of whom shall have the right to appear at the hearing. The commissioner may require as a condition of consent that the mutual company make modifications of the proposed plan that the commissioner finds necessary for the protection of policyholders. The commissioner shall consent to the plan if he or she finds all of the following:

(1) For the conversion of a mutual insurer, the plan is fair and equitable to the insurer and its policyholders.

(2) For the conversion of a mutual holding company, the plan is fair and equitable to the company, its members, and the policyholders of the converted insurer.

(3) The plan does not violate the law.

(4) The converted insurer will, after the conversion, satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

(b) For the conversion of a converting mutual life company, the commissioner may appoint one or more actuarial, financial, or other consultants, including legal counsel, as the commissioner finds necessary to advise the commissioner in making the determination of whether the proposed plan of conversion meets the applicable requirements of this chapter. The converting mutual life company is responsible for the reasonable fees and expenses of any actuarial, financial, or other consultants, including legal counsel, appointed, and for the mailing and publication of notices to the mutual company and its members.

CHAPTER 869

An act to amend Section 2207 of, to add Section 2773.2 to, to add and repeal Section 2715.5 of, and to repeal Section 2774.6 of, the Public Resources Code, relating to surface mining.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 2207 of the Public Resources Code is amended to read:

2207. (a) The owner, lessor, lessee, agent, manager, or other person in charge of any mining operation of whatever kind or character within the state shall forward to the director annually not later than a date established by the director, upon forms furnished by the board, a report that identifies all of the following:

(1) The name, address, and telephone number of the person, company, or other owner of the mining operation.

(2) The name, address, and telephone number of a designated agent who resides in this state, and who will receive and accept service of all orders, notices, and processes of the lead agency, board, director, or court.

(3) The location of the mining operation, its name, its mine number as issued by the Bureau of Mines or the director, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey $7^1/_2$-minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

(8) Proof of annual inspection by the lead agency.

(9) Proof of financial assurances.

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.

(13) The approximate total of disturbed acreage reclaimed during the previous calendar year.

(14) The approximate total unreclaimed disturbed acreage remaining as of the end of the calendar year.

(15) The total production for each mineral commodity produced during the previous year.

(16) A copy of any approved reclamation plan and any amendments or conditions of approval to any existing reclamation plan approved by the lead agency.

(b) Every year, not later than the date established by the director, the person submitting the report pursuant to subdivision (a) shall forward to the lead agency, upon forms furnished by the board, a report that provides all of the information specified in paragraphs (1) to (14), inclusive, of subdivision (a).

(c) Subsequent reports shall include only changes in the information submitted for the items described in subdivision (a), except that, instead of the approved reclamation plan, the reports shall include any reclamation plan amendments approved during the previous year. The reports shall state whether review of a reclamation plan, financial assurances, or an interim management plan is pending under subdivision (b), (c), (d), or (h) of Section 2770, or whether an appeal before the board or lead agency governing body is pending under subdivision (e) or (h) of Section 2770. The director shall notify the person submitting the report and the owner's designated agent in writing that the report and the fee required pursuant to subdivision (d) have been received, specify the mining operation's mine number if one has not been issued by the Bureau of Mines, and notify the person and agent of any deficiencies in the report within 90 days of receipt. That person or agent shall have 30 days from receipt of the notification to correct the noted deficiencies and forward the revised reports to the director and the lead agency. Any person who fails to comply with this section, or knowingly provides incorrect or false information in reports required by this section, may be subject to an administrative penalty as provided in subdivision (c) of Section 2774.1.

(d) (1) The board shall impose, by regulation, pursuant to paragraph (2), an annual reporting fee on, and method for collecting

annual fees from, each active or idle mining operation. The maximum fee for any single mining operation shall not exceed two thousand dollars ($2,000) annually and shall not be less than fifty dollars ($50) annually.

(2) (A) The board shall adopt, by regulation, a schedule of fees authorized under paragraph (1) to cover the department's cost in carrying out this section and Chapter 9 (commencing with Section 2710), as reflected in the Governor's Budget, and may adopt those regulations as emergency regulations. In establishing the schedule of fees to be paid by each active and idle mining operation, the fees shall be calculated on an equitable basis reflecting the size and type of operation. The board shall also consider the total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan.

(B) Regulations adopted pursuant to this subdivision shall be adopted by the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of any emergency regulations pursuant to this subdivision shall be considered necessary to address an emergency and shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(3) The total revenue generated by the reporting fees shall not exceed, and may be less than, the amount of one million dollars ($1,000,000), as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 1991–92 fiscal year and annually thereafter. If the director determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the board shall adjust the fees to compensate for the overcollection or undercollection of revenues.

(4) The reporting fees established pursuant to this subdivision shall be deposited in the Mine Reclamation Account, which is hereby created. Any fees, penalties, interest, fines, or charges collected by the director or board pursuant to this chapter or Chapter 9 (commencing with Section 2710) shall be deposited in the Mine Reclamation Account. The money in the account shall be available to the department and board, upon appropriation by the Legislature, solely to carry out this section and Chapter 9 (commencing with Section 2710).

(5) In case of late payment of the reporting fee, a penalty of not less than one hundred dollars ($100) or 10 percent of the amount due, whichever is greater, plus interest at the rate of $1^1/_2$ percent per month, computed from the delinquent date of the assessment until and including the date of payment, shall be assessed. New mining operations that have not submitted a report shall submit a report prior to commencement of operations. The new operation shall

submit its fee according to the reasonable fee schedule adopted by the board, and the month that the report is received shall become that operation's anniversary month.

(e) The lead agency may impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this chapter and Chapter 9 (commencing with Section 2710).

(f) For purposes of this section, "mining operation" has the same meaning as "surface mining operation" as defined in Section 2735, unless excepted by Section 2714. For the purposes of fee collections only, "mining operation" may include one or more mines operated by a single operator or mining company on one or more sites, if the total annual combined mineral production for all sites is less than 100 troy ounces for precious metals, if precious metals are the primary mineral commodity produced, or less than 100,000 short tons if the primary mineral commodity produced is not precious metals.

(g) Any information in reports submitted pursuant to subdivision (a) that includes or otherwise indicates the total mineral production, reserves, or rate of depletion of any mining operation shall not be disclosed to any member of the public, as defined in subdivision (f) of Section 6252 of the Government Code. Other portions of the reports are public records unless excepted by statute. Statistical bulletins based on these reports and published under Section 2205 shall be compiled to show, for the state as a whole and separately for each lead agency, the total of each mineral produced therein. In order not to disclose the production, reserves, or rate of depletion from any identifiable mining operation, no production figure shall be published or otherwise disclosed unless that figure is the aggregated production of not less than three mining operations. If the production figure for any lead agency would disclose the production, reserves, or rate of depletion of less than three mining operations or otherwise permit the reasonable inference of the production, reserves, or rate of depletion of any identifiable mining operation, that figure shall be combined with the same such figure of not less than two other lead agencies without regard to the location of the lead agencies. The bulletin shall be published annually by June 30 or as soon thereafter as practicable.

SEC. 2. Section 2715.5 is added to the Public Resources Code, to read:

2715.5. (a) The Cache Creek Resource Management Plan, in conjunction with a site specific plan deemed consistent by the lead agency with the Cache Creek Resource Management Plan, until December 31, 2003, shall be considered to be a functional equivalent of a reclamation plan for the purposes of this chapter. No other reclamation plan shall be required to be reviewed and approved for any excavation project subject to the Cache Creek Resource Management Plan that is conducted in conformance with an approved site specific plan that is consistent with the Cache Creek Resource Management Plan, and the standards specified in that plan

governing erosion control, channel stabilization, habitat restoration, flood control, or infrastructure maintenance, if that plan is reviewed and approved by a lead agency pursuant to this chapter.

(b) For purposes of this section, the board of supervisors of the county in which the Cache Creek Resource Management Plan is to be implemented shall prepare and file the annual report required to be prepared pursuant to Section 2207.

(c) Nothing in this section precludes an enforcement action by the board or the department brought pursuant to this chapter or Section 2207 if the lead agency or the director determines that a surface mining operator, acting under the authority of the Cache Creek Resource Management Plan, is not in compliance with the requirements of this chapter or Section 2207.

(d) "Site specific plan," for the purposes of this section, means an individual project plan approved by the lead agency that is consistent with the Cache Creek Resource Management Plan. Site specific plans prepared in conformance with the Cache Creek Resource Management Plan shall, at a minimum, include the information required pursuant to subdivision (c) of Section 2772, shall comply with the requirements of Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Title 14 of the California Code of Regulations and shall be provided along with a financial assurance estimate to the department for review and comment pursuant to Section 2774. Notwithstanding the number of days authorized by paragraph (1) of subdivision (d) of Section 2774, the department shall review the site specific plan and the financial assurance estimate and prepare any written comments within 15 days from the date of receipt of the plan and the estimate.

(e) Prior to engaging in an excavation activity in conformance with the Cache Creek Resource Management Plan, a surface mining operation shall be required to obtain financial assurances that meet the requirements of Section 2773.1.

(f) This section shall remain in effect only until December 31, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before December 31, 2003, deletes or extends that date.

SEC. 3. Section 2773.2 is added to the Public Resources Code, to read:

2773.2. (a) The Secretary of the Resources Agency shall convene a multiagency task force that shall evaluate the effectiveness of the Cache Creek Resource Management Plan in achieving the plan's objectives concerning the rehabilitation and restoration of Cache Creek and identify those aspects of the plan that should be modified or eliminated to more effectively achieve the goals of this chapter.

(b) The task force shall consist of nine members as follows:

(1) A representative of the department.

(2) A representative of the Department of Fish and Game.

(3) A representative of the State Water Resources Control Board.

(4) Six members appointed by the Secretary of the Resources Agency. Of these six members, two shall be elected officials of a city or county with active mining operations within its jurisdiction, one of whom shall represent northern California interests, and one of whom shall represent southern California interests; one shall be a person currently engaged in in-stream mining activities as an employee or owner of a mining operation; one shall be a member of the State Mining and Geology Board; and two shall be members of the scientific community who are affiliated with a California institution of higher education. The representative of the department shall serve as the chairperson of the task force.

(c) The task force, not later than January 1, 2001, shall recommend to the Secretary of the Resources Agency any revisions to this chapter or any other provisions of law, including regulations of the State Mining and Geology Board, that are necessary to incorporate regional resource management plans in the state's regulation of in-stream mine reclamation. The task force recommendations shall, at a minimum, address all of the following issues:

(1) Flood control.

(2) Stream bank and channel erosion control.

(3) Slope stability.

(4) Vegetation and revegetation.

(5) The interrelationships of private and public land ownership along and within streambed areas, including ownership rights that are or may be "vested" as the term is used in Section 2776.

(6) The provision of adequate financial assurances for reclaiming mined areas.

(7) The monitoring of compliance with qualitative and quantitative measures to regulate mine reclamation on large segments of streams and rivers.

(8) Cumulative and site specific issues related to resource management for in-stream mine reclamation.

(d) The department shall only convene the multiagency task force required pursuant to subdivision (a) if the costs associated with the operation of the task force will not diminish the department's ability to provide reclamation plan review, financial assurance review, and field inspections, undertake other enforcement actions and provide local assistance to cities or counties under this chapter.

SEC. 4. Section 2774.6 of the Public Resources Code is repealed.

SEC. 5. Sections 2 and 3 of this act shall not become operative until such time that the State Mining and Geology Board approves the County of Yolo implementing ordinance governing in-channel noncommercial extraction activities carried out pursuant to the Cache Creek Resource Management Plan and notifies the Secretary of State in writing of that approval.

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 870

An act to amend Sections 2 and 3 of Chapter 625 of the Statutes of 1991, and to repeal Section 10 of Chapter 620 of the Statutes of 1989, relating to state property.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 10 of Chapter 620 of the Statutes of 1989 is repealed.

SEC. 2. Section 2 of Chapter 625 of the Statutes of 1991, as amended by Chapter 731 of the Statutes of 1998, is amended to read:

Sec. 2. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, or lease for current market value or for any lesser consideration authorized by law and upon terms and conditions and subject to reservations and exceptions that the director determines are in the best interest of the state, all or any part of the following real property:

Parcel 1. Approximately 0.95 acre, with a structure used as a field office by the California Highway Patrol at 25111 The Old Road, Newhall, Los Angeles County.

Parcel 2. Approximately 0.92 acre, with a structure used as a field office by the California Highway Patrol at 60 North Highland Springs Avenue, Banning, Riverside County.

Parcel 4. Approximately 1.08 acres, with a structure used as a field office by the California Highway Patrol at 11050 13th Avenue, Hanford, Kings County.

Parcel 5. Approximately 0.95 acre, with a structure used as a field office by the California Highway Patrol at 79-500 Varner Road, Indio, Riverside County.

Parcel 6. Approximately 1.92 acres, with a structure used as a field office by the California Highway Patrol at 1800 East Childs Avenue, Merced, Merced County.

Parcel 7. Approximately 0.73 acre, with a structure used as a field office by the California Highway Patrol at Navahoe Road at Highway 50, Meyers, South Lake Tahoe, El Dorado County.

Parcel 10. Approximately 0.94 acre, with a structure used as a field office by the California Highway Patrol at 19055 Portola Drive, Salinas, Monterey County.

Parcel 13. Approximately 1.3 acres, with a structure used by the Department of Motor Vehicles, located at 615 Locust Street, Redding, Shasta County.

SEC. 3. Section 3 of Chapter 625 of the Statutes of 1991, as amended by Chapter 391 of the Statutes of 1994, is amended to read:

Sec. 3. The Director of General Services, with the approval of the State Public Works Board, may sell or lease for current market value only, all or any part of the following property:

Parcel 2. Approximately 1.07 acres, with a structure used by the Employment Development Department, located at 1313 Pine Avenue, Long Beach, Los Angeles County.

Parcel 3. Approximately 0.43 acre, with a structure used by the Employment Development Department, located at 660 Tule Street, Mendota, Fresno County.

Parcel 5. Approximately 0.18 acre, with a structure used by the Employment Development Department, located at 500 North Garden, Visalia, Tulare County.

Parcel 6. Approximately 1.46 acres, with a structure used by the Employment Development Department, located at 100 North Imperial Avenue, El Centro, Imperial County.

Parcel 7. Approximately 0.63 acre, with a structure used by the Employment Development Department, located at 240 West 7th Street, Chico, Butte County.

Parcel 8. Approximately 1.17 acres, with a structure used by the Employment Development Department, located at 346 Front Street, Salinas, Monterey County.

Parcel 9. Approximately 0.85 acre with a structure used by the Employment Development Department, located at 805 R Street, Sacramento, Sacramento County.

SEC. 4. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, lease, or transfer for current market value only, all or any part of the following property:

Parcel 1. Approximately 0.98 acre, with a structure used by the Employment Development Department, located at 1301 Pine Street, Redding, Shasta County.

Parcel 2. Approximately 6.64 acres, formerly the site of the Cohasset Forest Fire Station that was partially destroyed by fire on February 1, 1995, located at 405 Vilas Road, Cohasset, Butte County.

Parcel 3. Approximately 0.66 acre, with a structure formerly the site of the Lyons Valley Forest Fire Station, located at 17461 Lyons Valley Road, Jamul, San Diego County.

SEC. 5. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, or lease for a term up to 66 years for current market value or for any lesser consideration authorized by law and upon terms and conditions and subject to reservations and exceptions that the directors determine are in the best interest of the state, all or any part of the following real property:

Parcel 1. An approximate 0.11 acre portion of the existing five acre Sage Forest Fire Station located at 35655 Sage Road, Hemet, Riverside County.

Parcel 2. An approximate 0.06 acre portion of the existing three acre Loma Rica Forest Fire Station, located at 11485 Loma Rica Road, Marysville, Yuba County.

SEC. 6. The Department of General Services may sell, exchange, or lease for current market value or any lesser consideration that the director determines is in the best interest of the state, all or any part of the following described property: that approximately 2.58 acres of vacant land at the easternmost end of the property occupied by the Franchise Tax Board, located at 9645 Butterfield Way, Sacramento, Sacramento County, and shown as Assessor Parcel 068-0210-027, Assessor's Office of the County of Sacramento. This sale, exchange, or lease shall be exempt from Sections 11011 and following and 54220 and following of the Government Code.

SEC. 7. The Director of Parks and Recreation, with the approval of the State Public Works Board and the Director of General Services, may exchange for real property of equal value and upon terms and conditions and with reservations and exceptions that are deemed to be in the best interest of the state, all or part of the following real property:

Parcel 1. Approximately 80 acres of vacant land at Oceano Dunes State Vehicular Recreation Area, north of Oso Flaco Road near the City of Oceano, San Luis Obispo County.

SEC. 8. (a) Notices of every public auction or bid opening shall be posted on the real property to be sold under this act and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(b) Any sale, exchange, lease, or transfer of the parcels described in this act is exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

SEC. 9. (a) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any parcels.

(b) The net proceeds of any moneys received from the disposition of any parcels described in this act shall be deposited in the General Fund and be available for appropriation in accordance with Section 15863 of the Government Code, except as follows:

(1) The net proceeds received from the disposition of Parcel 1 in Section 4 shall be deposited in the Employment Development Department Building Fund.

SEC. 10. As to any property sold pursuant to this act consisting of 15 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to property sold pursuant to this act consisting of

more than 15 acres, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed that the director, after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

SEC. 11. The authorization to sell, exchange, or lease the following properties is rescinded by Sections 1, 2, and 3 of this act, as the concerned state agencies have reported that the following properties are no longer considered surplus:

(a) The parcel described in Section 10 of Chapter 620 of the Statutes of 1989.

(b) Parcel 12 of Section 2 of Chapter 625 of the Statutes of 1991.

(c) Parcel 4 of Section 3 of Chapter 625 of the Statutes of 1991.

CHAPTER 871

An act to amend Sections 36615, 36621, 36623, 36631, 36633, 36635, 36641, 36642, 36650, and 36651 of, to amend and renumber Section 36626 of, to repeal Sections 36624, 36626.5, 36626.6, and 36626.7 of, to repeal and add Sections 36625 and 36627 of, and to add Section 36626 to, the Streets and Highways Code, relating to improvement districts.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 36615 of the Streets and Highways Code is amended to read:

36615. "Property owner" or "owner" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. The city council has no obligation to obtain other information as to the ownership of land, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this subdivision requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient.

SEC. 2. Section 36621 of the Streets and Highways Code is amended to read:

36621. (a) Upon the submission of a written petition, signed by the property owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of

assessment attributable to property owned by the same property owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

(1) A map showing the boundaries of the district.

(2) Information specifying where the complete management district plan can be obtained.

(3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, and a description of the exterior boundaries of the proposed district. The descriptions do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.

(2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall not be held more than 90 days after the adoption of the resolution of intention.

SEC. 3. Section 36623 of the Streets and Highways Code is amended to read:

36623. If a city council proposes to levy a new or increased benefit assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

SEC. 4. Section 36624 of the Streets and Highways Code is repealed.

SEC. 5. Section 36625 of the Streets and Highways Code is repealed.

SEC. 6. Section 36625 is added to the Streets and Highways Code, to read:

36625. (a) If the city council, following the public hearing, decides to establish the proposed property and business improvement district, and the city council has made changes pursuant to Section 36624, and the changes substantially change the proposed assessment, the city council shall adopt a resolution of preliminary adoption that shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, and a description of the exterior boundaries of the proposed district. The descriptions do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the

improvements and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received.

(5) A statement that the properties in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district.

(7) A finding that the property within the business and improvement area will be benefited by the improvements and activities funded by the assessments proposed to be levied.

(b) Not earlier than 30 days after the resolution of preliminary adoption, if the city council decides to establish the proposed property and business improvement district, the council shall consider all written protests. If written protests are received from property owners in the proposed district who pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than that 50 percent, the proceedings to create the proposed district shall be terminated.

(c) If not required to terminate the proceedings in compliance with subdivision (b), the city council shall adopt a resolution consistent with the resolution of preliminary adoption. The adoption of the resolution and recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan. The resolution shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, and a description of the exterior boundaries of the proposed district. The descriptions do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention and resolution of preliminary adoption.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received.

(5) A statement that a property and business improvement district has been established.

(6) A statement that the properties in the district established by the resolution shall be subject to any amendments to this part.

(7) A statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district.

(8) A finding that the property within the property and business improvement district will be benefited by the improvements and activities funded by the assessments proposed to be levied.

SEC. 7. Section 36626 of the Streets and Highways Code is amended and renumbered to read:

36624. At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements or activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

SEC. 8. Section 36626 is added to the Streets and Highways Code, to read:

36626. If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in paragraphs (1) to (8), inclusive, of subdivision (b) of Section 36625, but need not contain information about the preliminary resolution if none has been adopted.

SEC. 9. Section 36626.5 of the Streets and Highways Code is repealed.

SEC. 10. Section 36626.6 of the Streets and Highways Code is repealed.

SEC. 11. Section 36626.7 of the Streets and Highways Code is repealed.

SEC. 12. Section 36627 of the Streets and Highways Code is repealed.

SEC. 13. Section 36627 is added to the Streets and Highways Code, to read:

36627. Following adoption of the resolution establishing the district pursuant to Section 36625 or 36626, the clerk of the city shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

SEC. 14. Section 36631 of the Streets and Highways Code is amended to read:

36631. (a) Before adopting a resolution establishing the district, the city council shall appoint an advisory board which shall make a recommendation to the city council on the expenditure of revenues derived from the levy of assessments pursuant to this part, on the classification of properties, as applicable, and on the method and basis of levying the assessments. The city council may designate existing advisory boards or commissions to serve as the advisory board for the district or may create a new advisory board for that purpose. At least one member of the advisory board shall be a business licensee within the district who is not also a property owner within the district.

(b) Any advisory board appointed by the city council pursuant to subdivision (a) shall comply with the provisions of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

SEC. 15. Section 36633 of the Streets and Highways Code is amended to read:

36633. (a) The advisory board shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The advisory board's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones within the district.

(2) The improvements and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements and the activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property owner to estimate the amount of the assessment to be levied against his or her property for that fiscal year.

(5) The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the advisory board or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36640 and 36641. The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments.

SEC. 16. Section 36635 of the Streets and Highways Code is amended to read:

36635. The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

SEC. 17. Section 36641 of the Streets and Highways Code is amended to read:

36641. (a) Upon the written request of the advisory board, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 53753 of the Government Code.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

SEC. 18. Section 36642 of the Streets and Highways Code is amended to read:

36642. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. Notice of the public hearing and the proposed modifications shall be published as provided in Section 36623.

SEC. 19. Section 36650 of the Streets and Highways Code is amended to read:

36650. (a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the

management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assessees may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners of real property in the area who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.

(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel in the district. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

SEC. 20. Section 36651 of the Streets and Highways Code is amended to read:

36651. (a) Upon the disestablishment of a district, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be refunded to the owners of the property then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

CHAPTER 872

An act to amend Sections 8483 and 8483.7 of, and to add Sections 8482.8 and 32270.5 to, the Education Code, relating to school safety, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 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 School Safety Act of 2000.

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

(a) The California Constitution declares that all students and staff of primary, elementary, junior high, and senior high school have the inalienable right to attend campuses that are safe.

(b) The safety of pupils, teachers, and school employees is one of the foremost public policy issues facing our state.

(c) Recent events in California and nationally make it clear that violence is a real threat in our public schools.

(d) The elimination of guns and other weapons from school classrooms and campuses is of paramount importance.

(e) In order to protect the safety of pupils, schools and teachers should be integrated into local emergency networks at all times.

(f) School safety would be enhanced if all teachers were equipped with a cellular telephone they could use inside or outside of the classroom for emergencies.

(g) Comprehensive and long-term violence prevention efforts include appropriate funding for school safety equipment and devices that help to eliminate guns, weapons, gangs, drugs, and other threats to pupils and staff from schools and for the acquisition, construction, or alteration of school facilities necessary to make campuses more safe.

SEC. 3. Section 8482.8 is added to the Education Code, to read:

8482.8. (a) If there is a significant barrier to pupil participation in a program established pursuant to this article at the school of attendance, an applicant may request approval from the Superintendent of Public Instruction, prior to or during the grant application process, to provide services at another schoolsite. An applicant that requests approval shall address the manner in which the applicant intends to provide safe, supervised transportation between schoolsites; ensure communication among teachers in the regular school program, staff in the after school program, and parents of pupils; and align the educational and literacy component of the after school program with participating pupils' regular school programs.

(b) For purposes of this article, a significant barrier to pupil participation in a program established pursuant to this chapter means either of the following:

(1) Fewer than 20 pupils participating in the program.

(2) Extreme transportation constraints, including, but not limited to, desegregation bussing, bussing for magnet or open enrollment schools, or pupil dependence on public transportation.

SEC. 4. Section 8483 of the Education Code is amended to read:

8483. (a) (1) Every after school program established pursuant to this article shall operate a minimum of three hours a day and at

least until 6 p.m. on every regular schoolday. Every program shall establish a policy regarding reasonable early daily release of pupils from the program.

(2) It is the intent of the Legislature that elementary school pupils participate in the full day of the program every day during which pupils participate and that pupils in middle school or junior high school attend a minimum of nine hours a week and three days a week to accomplish program goals, except when released early in accordance with the early release policy described in paragraph (1) or as reasonably necessary.

(3) In order to develop an age appropriate after school program for pupils in middle school or junior high school, programs established pursuant to this article may implement a flexible attendance schedule for those pupils. Priority for enrollment of pupils in middle school or junior high school shall be given to pupils who attend daily.

(b) The administrators of a program established pursuant to this article shall have the option of operating during any combination of summer, intersession, or vacation periods for a minimum of three hours per day at the approved rate for the regular school year pursuant to Section 8483.7.

SEC. 5. Section 8483.7 of the Education Code is amended to read:

8483.7. (a) It is the intent of the Legislature that a minimum of eighty-five million dollars ($85,000,000) be appropriated for the program established pursuant to this article, through the annual Budget Act. Of the funds appropriated for the program, 50 percent shall be reserved for programs that operate at elementary schools and 50 percent shall be reserved for programs that operate at middle and junior high schools. If there are not a sufficient number of qualified applicants to use all of the funding in one category, the remaining funds may be used for qualified applicants in the other category.

(b) (1) (A) Every school that establishes a program pursuant to this article is eligible to receive a three year renewable incentive grant, subject to annual reporting and recertification as required by the State Department of Education, for either of the following, as selected by the school:

(i) Up to five dollars ($5) per day per pupil, if the program serves pupils in elementary, middle, or junior high school.

(ii) Five dollars ($5) per pupil for each three hours of pupil attendance, with a maximum total reimbursement of twenty-five dollars ($25) per pupil per week, if the program serves pupils in middle or junior high school. To receive reimbursement pursuant to this subparagraph, the program administrator shall apply to and receive approval annually from the Superintendent of Public Instruction. Approval by the Superintendent of Public Instruction shall be based on program results.

(B) The maximum total grant amount awarded pursuant to this paragraph shall be seventy-five thousand dollars ($75,000) for each regular school year for each elementary school and one hundred thousand dollars ($100,000) for each regular school year for each middle or junior high school.

(2) For large schools, the maximum total grant amounts described in paragraph (1) may be increased based on the following formulas, up to a maximum amount of twice the respective limits specified in paragraph (1):

(A) For elementary schools, multiply seventy-five dollars ($75) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 600.

(B) For middle schools, multiply seventy-five dollars ($75) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 900.

(3) A school that establishes a program pursuant to this article is eligible to receive a supplemental grant to operate the program during any combination of summer, intersession, or vacation periods for a maximum of the lesser of the following amounts:

(A) Five dollars ($5) per day per pupil.

(B) Thirty percent of the total grant amount awarded to the school per school year pursuant to this subdivision.

(4) Each program shall provide at least 50 percent cash or in-kind local matching funds from the school district, governmental agencies, community organizations, or the private sector for each dollar received in grant funds. Neither facilities nor space usage may fulfill the match requirement.

(c) The administrator of a program established pursuant to this article may supplement, but not supplant existing funding for after school programs with grant funds awarded pursuant to this article. State categorical funds for remedial education activities shall not be eligible as matching funds for those after school programs.

(d) Up to 15 percent of the initial year's grant amount for each grant recipient may be utilized for startup costs. Under no circumstance shall funding for startup costs result in an increase in the grant recipient's total funding above the approved grant amount.

SEC. 6. Section 32270.5 is added to the Education Code to read:

32270.5. The partnership shall discuss with providers of telephone equipment and services, and shall acquire information regarding, the availability of no-cost or reduced-cost cellular telephones and services to be provided on a statewide basis to each public school teacher for use as a classroom safety device. Although the primary purpose of providing the cellular telephones is school safety, a teacher receiving a cellular telephone as a result of these discussions, shall be encouraged to use the cellular telephone for school related purposes other than school safety. These purposes would include purposes that further the smooth administration of general classroom and school functions, including, but not limited to, communicating

with parents about a pupil's education, communication with pupils about classwork and homework assignments, and communicating with other teachers and school administrators about school operations generally. Thus, the discussions between the partnership and the providers shall include the availability of no-cost or reduced-cost services in consideration of the complete usage contemplated pursuant to this section. The partnership shall ensure that each school district, county office of education, schoolsite council, and school safety planning committee developing a school safety plan pursuant to Article 10.3 (commencing with Section 35294) of Chapter 2 of Part 21 is provided with information regarding the availability of the no-cost or reduced-cost cellular telephones and services for consideration in developing its plan.

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 school districts to increase school safety in the 1999–2000 school year, it is necessary that this act take effect immediately.

CHAPTER 873

An act to repeal, add, and repeal Chapter 7 (commencing with Section 11700) of Division 3 of Title 2 of the Government Code, relating to information technology, and making an appropriation therefor.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to reaffirm the role and duties of the Department of Information Technology as established by existing law in the strongest possible manner.

SEC. 2. Chapter 7 (commencing with Section 11700) of Division 3 of Title 2 of the Government Code is repealed.

SEC. 3. Chapter 7 (commencing with Section 11700) is added to Division 3 of Title 2 of the Government Code, to read:

CHAPTER 7. INFORMATION TECHNOLOGY

Article 1. Intent and Definitions

11700. (a) The Legislature finds that information technology is an indispensable tool of modern government for the rapid and efficient handling of data, records, communication, and transactions, and for assisting decisionmakers in carrying out their tasks and responsibilities at all levels of government.

(b) The Legislature finds that advances in information technology, such as automated office systems, personal computers, electronic mail, and others, have the potential to increase the productivity, efficiency, and responsiveness of the state's operations. The Legislature finds that a need exists to facilitate the productive application of information technology to state programs, and to do so in a manner that significantly improves the return on the state's investment in this technology. Therefore, the Legislature intends that the Department of Information Technology created by this chapter, shall improve the state's ability to apply information technology effectively, and provide guidance and leadership to state agencies in identifying, designing, and implementing these applications, and where feasible, promote phased implementation and funding of large and complex projects.

11701. It is the intent of the Legislature to create the Department of Information Technology that shall do all of the following:

(a) Provide statewide guidance to state agencies regarding acquisition, management, and appropriate use of information technology to improve operational productivity, reduce the cost of government, enhance service to customers, lower the cost and risk to taxpayers when implementing information technology, and expand the use of information technology to make government more accessible to the public.

(b) Develop specific statewide strategies, policies, and processes, including oversight, to improve the state's overall management of information technology; improve the state's overall management of information technology projects; improve the development and contract management of information technology acquisitions; guide state agencies in the acquisition, management, and use of information technology; and provide guidance to all state agencies to ensure that the agency's information technology direction is consistent with the agency's mission, business plan, and a results-oriented management policy.

(c) Develop statewide policies and plans for information technology that recognize the interrelationships and impact of state activities on local governments, including local school systems, private companies that supply needed goods and services to agencies and the federal government, and require individual state agency plans be aligned with statewide policies and plans.

(d) Develop appropriate policies and requirements for risk management and for sharing risk and benefits with the private sector in the acquisition of information technology products and services.

(e) Develop policies, goals, and objectives for one-time collection of data, allowing its use by all appropriate agencies without jeopardizing the security or confidentiality of information as provided by statute or the constitutional protection of individual rights to privacy.

(f) Establish and maintain criteria to be followed by state government in participating with private industry, and federal, state, and local government in demonstrating or developing advanced information technologies.

(g) Update continuously policies developed in carrying out the intent of this chapter for inclusion in the State Administrative Manual to reflect changing state needs related to information technology.

(h) Develop policies and standards to improve the acquisition and management of information technology projects in consultation with the Department of General Services, Office of Procurement.

11702. The following definitions apply for the purposes of this chapter, unless the context requires otherwise:

(a) "Advanced information technologies" includes, but is not limited to, technologies of a nature providing opportunities of value to the state, and technologies to which the state has limited access because of the lack of previous application to government processes and that limit the competitiveness of the acquisition due to the advanced nature of the technology.

(b) "Agency" means agency, department, board, commission, data center, or any other state entity.

(c) "Department" means the Department of Information Technology.

(d) "Director" means the state chief information officer and the Director of Information Technology, and may be used interchangeably.

(e) "Information technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.

(f) "Infrastructure" consists of information technology equipment, software, communications networks, facilities, and staff. Specifically included in statewide infrastructure are data centers and wide-area networks with their associated management and support capabilities.

Article 2. Department of Information Technology

11710. (a) There is hereby created in the executive branch the Department of Information Technology, that shall be managed by the Director of Information Technology, who shall be appointed by the Governor, with the consent of the Senate, and who shall serve at the pleasure of the Governor.

(b) The department, among other duties, shall perform the statutory duties and responsibilities of the former Office of Information Technology. Any reference in any law to the Office of Information Technology or the director of that office shall be considered a reference to the Department of Information Technology and the Director of Information Technology, as the case may be, unless the context otherwise requires.

(c) The Governor, upon recommendation of the director, shall appoint two officers exempt from civil service who are necessary for the administration of the department. The exempt officers appointed pursuant to this subdivision shall have both knowledge and expertise in the area of information technology. 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 other assistants and other employees as are necessary for the administration of the department and shall prescribe their duties.

(d) The department shall provide leadership, guidance, and oversight of information technology in state government, including, but not limited to, all of the following:

(1) Development of statewide vision, strategies, plans, policies, requirements, standards, and infrastructure.

(2) Implementation of efficient, effective, and timely information technology acquisition and project management processes.

(3) Identification of available information technology resources from both public and private sectors.

(4) Development and implementation of an information technology equipment and software acquisition strategy that moves the state steadily to an architecture to provide maximum practical compatibility to facilitate information sharing among all computing systems in state government.

(5) Promotion of reforms in information technology personnel classifications and in systems and procedures that reward skill in meeting business needs and facilitation of change with effective application of information technology.

(e) The Department of Information Technology shall have possession and control of all relevant records and papers held for the benefit or use of the former Office of Information Technology in the performance of its statutory duties, powers, purposes, and responsibilities.

11711. The director shall be responsible for all of the following:

(a) Developing plans and policies to support and promote the effective application of information technology within state government as a means of saving money, increasing employee productivity, and improving state services to the public, including public electronic access to state information.

(b) Overseeing the management of information technology in state agencies, the development and management of information technology projects, and acquisition of information technology to ensure compliance with statewide strategies, policies, and standards.

(c) Preparing annual reports to the Governor and the Legislature as to the status and result of the state's specific information technology plans.

(d) Developing and maintaining a computer based file, for use by the department and the Legislature, of all information technology projects for which a feasibility study report has been approved.

(e) Recommending to the Governor and Legislature changes needed in state policies and laws to accomplish the purposes of this chapter.

(f) Identifying which applications of information technology should be statewide in scope, and ensure that these applications are not developed independently or duplicated by individual state agencies.

(g) Establishing policies and procedures, where appropriate, to ensure that major projects are scheduled and funded in phases and that authority to proceed to the next phase of a project will be contingent upon successful completion of the prior phase. The policies and procedures to be developed by the director shall include the identification of one or more specific results deliverable for each phase that will provide the basis for assessing the extent to which a phase has been completed successfully.

11712. The director is vested with the authority to do the following:

(a) Review proposed agency information technology projects for compliance with statewide strategies, policies, and standards, including project management methods and standards.

(b) Grant or withhold approval to initiate agency information technology projects based upon the review performed in accordance with subdivision (a). The director shall consult with the affected agencies and the involved control and service agencies, as appropriate, when granting or withholding approval on information technology projects. The director shall make the final decision to initiate, suspend, or terminate an information technology project.

(c) Monitor agency information technology projects to ensure continued compliance with statewide strategies, policies, and standards, and project management methods and standards.

(d) Make recommendations for remedial measures to be applied to agency information technology projects in order to achieve compliance with statewide strategies, policies, and standards, and

proper project management methods and standards. Remedial measures include, but are not limited to, use of independent validation and verification methodologies based on engineering principles, conducted on an independent basis, by practitioners with recognized expertise and experience.

(e) Suspend, reinstate, or terminate projects after consultation with the affected agencies, and the involved control and service agencies.

(f) Develop policies and requirements for carrying out the responsibilities of this article for publication in the State Administrative Manual, or distribution by management memo.

11713. The director shall continue to develop plans and policies in a coordinated fashion regarding all of the following:

(a) The state data centers, including the optimum size and degree of centralization of the data centers.

(b) Information technology management personnel, including the training and qualifications of those personnel.

(c) Telecommunications networks, including both wide and local area networks.

(d) Public access, via telecommunications, to public records, indexes, and data bases maintained in computer accessible files in conformance with applicable laws relating to confidentiality and privacy of information.

11714. The role of the Department of Finance regarding the approval of information technology projects shall be limited to the approval of expenditure of funds on information technology projects.

Article 3. State Agency Responsibilities

11720. Subject to the authority of the office as set forth in this chapter, the head of each agency is responsible for the management of information technology in the agency that he or she heads, including, but not limited to, (a) the designation of an individual as the person responsible for information technology application and management within the agency; (b) the establishment of information technology strategies that support the accomplishment of the agency mission, business strategies, and objectives; (c) the justification of proposed information technology projects in terms of costs and benefits, as well as consistency with agency mission and statewide strategies, policies, requirements, and standards; (d) the management of information technology development and acquisition projects and the qualifications of project staff; and (e) the management of all agency information processing and communications activities. The head of each agency has responsibility over all information collected, processed, stored, or used by the agency that he or she heads.

Article 4. Reporting Requirements

11725. (a) It is the intent of the Legislature that the reorganization and specific requirements specified in this chapter be implemented as quickly as possible. However, the Legislature recognizes that in order for compliance to be most effective, careful planning and execution are essential.

(b) The director shall provide to the Joint Legislative Budget Committee and the appropriate policy and fiscal committees of the Assembly and Senate, on or before July 1, 1996, a written progress report of compliance to date and a plan and schedule for obtaining compliance for all other requirements of this chapter. Thereafter, the director shall report in writing annually by December 1 to those legislative committees of the progress in implementing this plan. This annual report shall include a statewide plan for information technology and support of state programs.

11726. Feasibility study reports, special project reports, and postimplementation evaluation reviews for information technology projects, if and when required, shall include in the front of the document a summary disclosing the following information:

(a) For feasibility study reports, the estimated project cost and benefits for the selected solution, the estimated start and completion dates, and the estimated number of months required to implement the project.

(b) For special project reports, the original estimates of cost, benefits, and schedule, the new estimates of cost, benefits and schedule, and where applicable, the estimated cost, benefits and schedule reflected in the most recent special project report.

(c) For postimplementation evaluation reports, an analysis of the original estimated versus actual costs, benefits, and schedule.

11730. It is the intent of the Legislature that the director shall be the state's advocate in the exploitation of information technology to increase the effectiveness and efficiency of government information technology services in program and support areas. The department shall adopt policies and procedures to carry out its advocacy role and shall publish and maintain them in the State Administrative Manual.

Article 6. User Committee

11735. The director shall form an information technology advisory committee or committees consisting of representatives of state agencies. These committees shall advise the director with respect to the management of information technology, including critical success factors for successful use and management of information technology and recommend changes in policy, both legislative and administrative, necessary to achieve successful information technology management.

11736. The advisory committee or committees shall prepare a written agenda for each of its meetings, and the advisory committees' finding and recommendation shall be in writing. These written documents shall be available to interested parties upon request.

11737. The representatives appointed to the user committee or committees shall be selected from individuals designated by the agency in accordance with Section 11720, or the most senior manager responsible for information technology in the agency. Additional appointments may be made at the discretion of the director.

11738. The director shall form an information technology advisory commission to provide advice to the director on information technology issues. Commission advice shall include, but is not limited to, long-term information technology trends and strategies, key information technology policy issues, strategic technologies that should be pursued, and practices in both public and private organizations.

11739. Appointments to the advisory commission shall be made by the director. Commission members shall utilize their knowledge, experience, and expertise in all matters of information technology, including new development and trends, acquisition, planning, implementation, and management. Members are to be selected from the private sector, academic sector, nonprofit organizations, and other governmental sectors. Members of the commission shall serve without compensation but may be reimbursed for actual and necessary travel expenses.

Article 7. Data Centers

11751. There is in the Department of Justice the Hawkins Data Center. The Hawkins Data Center shall be under the supervision of a data center director who shall be appointed by the Attorney General, in consultation with the Director of Information Technology, pursuant to civil service. The data center shall be subject to consolidation with other information technology centers in accordance with this chapter, if the Director of Information Technology deems it in the best interest of the state. The data center director shall be responsible for the efficient and effective management and operation of the data center.

11752. There is in the Business, Transportation and Housing Agency the Stephen P. Teale Data Center. The Stephen P. Teale Data Center shall be under the supervision of a data center director who shall be appointed by the Governor, in consultation with the Director of Information Technology, subject to confirmation by the Senate and serve at the pleasure of the Governor. The Stephen P. Teale Data Center shall be subject to consolidation with other information technology centers in accordance with this chapter, if the Director of Information Technology deems it in the best interest of the state. The Director of the Stephen P. Teale Data Center shall

receive a salary approved by the Department of Personnel Administration. The data center director shall be responsible for the efficient and effective management and operation of the data center. The data center director shall continue to communicate regularly with the Director of Information Technology regarding future needs of the center and the likely impact of emerging technologies.

11753. There is in the California Health and Human Services Agency the California Health and Human Services Agency Data Center. The California Health and Human Services Agency Data Center shall be under the supervision of a data center director who shall be appointed by the Secretary of the California Health and Human Services Agency, in consultation with the Director of Information Technology pursuant to civil service. The California Health and Human Services Agency Data Center shall be subject to consolidation with other information technology centers in accordance with this chapter, if the Director of Information Technology deems it in the best interest of the state. The data center director shall be responsible for the efficient and effective management and operation of the data center.

11754. There is in the State Treasury, the Stephen P. Teale Data Center Revolving Fund, hereafter referred to as the "TDC Fund," which fund is continuously appropriated for the purposes of this chapter, and the fund shall be continuously utilized without regard to fiscal years for the payment of expenses incurred by the Stephen P. Teale Data Center. Moneys available in the TDC Fund, not to exceed a total of 1 percent of the Stephen P. Teale Data Center's current fiscal year budget, may be allocated by the director to projects that demonstrate or develop advanced information technologies as solutions to information processing problems.

The expenditures for these allocations shall be provided for out of the unencumbered surplus of the TDC Fund. There shall be no expenditure in the event that there is no unencumbered surplus in any particular fiscal year.

The TDC Fund shall consist of the following:

(a) All moneys appropriated by the Legislature for the fund in accordance with law.

(b) All moneys received into the State Treasury from any source whatever in payment of electronic data processing services rendered by the Stephen P. Teale Data Center or for other services rendered by the Stephen P. Teale Data Center.

(c) All moneys from outstanding balances of prior fiscal years which have not reverted to the General Fund.

(d) The balance remaining in the TDC Fund at the end of any fiscal year whether the moneys received are from an appropriation or from payments for services rendered.

If the balance remaining in the TDC Fund at the end of any fiscal year exceeds 25 percent of the Stephen P. Teale Data Center's

current fiscal year budget, the billing rates for services rendered shall be adjusted downward for the following fiscal year.

If the Stephen P. Teale Data Center is consolidated with other state information technology centers, the TDC Fund shall cease to exist and any remaining funds shall be distributed in accordance with Section 16304.9.

11754.1. (a) The Stephen P. Teale Data Center may establish rates and collect payments from state agencies for providing services to those agencies. The methodology for computing costs and billing rates shall be subject to the approval of the Director of Finance.

(b) All money received by the Stephen P. Teale Data Center pursuant to this section shall be deposited in the Stephen P. Teale Data Center Revolving Fund. In order to assure that there is adequate cash in the fund, the Stephen P. Teale Data Center may require monthly payments in advance by client agencies, based on estimated billings. By mutual agreement between the Stephen P. Teale Data Center and the applicable state agency, a state agency may make monthly, quarterly, or annual payments in advance or arrears.

(c) Consistent with subdivision (b), and pursuant to Section 11255, the Controller shall transfer any amounts so authorized by the Stephen P. Teale Data Center. The Stephen P. Teale Data Center shall notify each affected state agency upon requesting the Controller to make the transfer.

11755. There is in the State Treasury, the California Health and Human Services Agency Data Center Revolving Fund, hereafter referred to as the "CHHSDC Fund," which fund is continuously appropriated for the purposes of this chapter. Moneys in the fund shall be continuously utilized without regard to fiscal years for the payment of expenses incurred by the California Health and Human Services Agency Data Center. Moneys available in the CHHSDC Fund, not to exceed a total of 1 percent of the California Health and Human Services Agency Data Center's current fiscal year budget, may be allocated by the director to projects that demonstrate or develop advanced information technologies as solutions to information processing problems.

The expenditures for these allocations shall be provided for out of the unencumbered surplus of the CHHSDC Fund. There shall be no expenditure in the event that there is no unencumbered surplus in any particular fiscal year.

The CHHSDC Fund shall consist of the following:

(a) All moneys appropriated by the Legislature for the fund in accordance with law.

(b) All moneys received into the State Treasury from any source whatever in payment of electronic data processing services rendered by the California Health and Human Services Agency Data Center or for other services rendered by the California Health and Human Services Agency Data Center.

(c) All moneys from outstanding balances of prior fiscal years which have not reverted to the General Fund.

(d) The balance remaining in the CHHSDC Fund at the end of any fiscal year whether the moneys received are from an appropriation or from payments for services rendered.

If the balance remaining in the CHHSDC Fund at the end of any fiscal year exceeds 25 percent of the California Health and Human Services Agency Data Center's current fiscal year budget, the excess amount shall be used to reduce the billing rates for services rendered during the following fiscal year.

If the California Health and Human Services Agency Data Center is consolidated with other state information technology centers, the CHHSDC Fund shall cease to exist and any remaining funds shall be distributed in accordance with Section 16304.9.

Article 8. Data Security and Confidentiality

11770. (a) The Department of Information Technology shall do all of the following:

(1) Develop the policies and standards to be followed in providing for the confidentiality of information.

(2) Develop policies necessary to provide for the security of the state's informational and physical assets.

(3) Develop policies to provide for the preservation of the state's information processing capability.

(4) Coordinate research and identify solutions to problems affecting information security.

(5) Review and approve personal services contracts for information security consulting services.

(6) Represent the state to the federal government, other agencies of state government, local government entities, and private industry on issues that have statewide impact on information security.

(7) Develop policies and monitor state agencies to ensure that agency business operations will continue to function in the event of a disaster.

(8) Review and advise on security plans concerning the location and construction of information processing facilities for state agencies.

(9) Prepare policies and procedures for inclusion in the State Administrative Manual for use by state agencies regarding the applicable law relating to confidentiality and privacy of, and public access to, information.

(b) State agencies shall notify the department of all incidents involving the unauthorized intentional damage to, or modification or destruction of, electronic information, and the damage to, or destruction or theft of, data processing equipment, or the intentional damage to, or destruction of, information processing facilities. The department shall investigate any incident it deems necessary.

(c) This section shall not apply to the California State Lottery.

11771. The chief executive officer of each state agency that uses, receives, or provides information technology services shall designate an information security officer who shall be responsible for implementing state policies and standards regarding the confidentiality and security of information pertaining to his or her respective agency. The policies and standards shall include, but are not limited to, strict controls to prevent unauthorized access to data maintained in computer files, program documentation, data processing systems, data files, and data processing equipment physically located in the agency.

11772. Any contract entered into by any state agency that includes provisions for information technology systems design, programming, documentation, conversion, equipment maintenance, and similar aspects of information technology services shall contain a provision requiring the contractor and all of his or her staff working under the contract to maintain all confidential information obtained as a result of the contract as confidential and to not divulge that information to any other person or entity.

Article 9. Disaster Recovery Planning

11773. Each state agency shall develop and continually update a disaster recovery plan with respect to information technology. Each agency shall establish a disaster recovery planning team to develop the disaster recovery plan and to administer the plan's implementation. In developing the plan, the disaster recovery planning team shall do all of the following:

(a) Consider the organizational, managerial, and technical environments in which the disaster recovery plan must be implemented.

(b) Assess the types and likely parameters of disasters most likely to occur and the resultant impacts on the agency's ability to perform its mission.

(c) List protective measures to be implemented in anticipation of a disaster, natural or manmade. Protective measures listed shall be:

(1) Those protective measures determined to be most cost-effective; and

(2) Identified through the risk management process for information technology referred to in the State Administrative Manual.

11774. Each state agency shall file a copy of its disaster recovery plan with the Department of Information Technology by January 31 of each year. The Department of Information Technology shall review and coordinate disaster planning with respect to information technology for all state agencies. If a state agency employs the services of a state data center, the agency must also provide the data center with a copy of its disaster recovery plan.

11775. For purposes of this article, "disaster recovery planning" includes, but is not limited to, the documentation, plans, policies, and procedures that are required to restore normal operation to a state agency impacted by manmade or natural disaster.

Article 10. Applicability

11780. The provisions of this chapter shall not apply to the University of California, the California State University, the State Compensation Insurance Fund, the community college districts, agencies provided for by Article VI of the California Constitution, or the Legislature.

Article 11. Repeal of Chapter

11785. This chapter 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.

CHAPTER 874

An act to add Sections 12012.25, 12012.75, and 12012.85 to the Government Code, relating to Indian tribes.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 12012.25 is added to the Government Code, to read:

12012.25. (a) The following tribal-state gaming compacts entered into in accordance with the Indian Gaming Regulatory Act of 1988 (18 U.S.C. Sec. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.) are hereby ratified:

(1) The compact between the State of California and the Alturas Rancheria, executed on September 10, 1999.

(2) The compact between the State of California and the Barona Band of Mission Indians, executed on September 10, 1999.

(3) The compact between the State of California and the Big Sandy Rancheria Band of Mono Indians, executed on September 10, 1999.

(4) The compact between the State of California and the Big Valley Rancheria, executed on September 10, 1999.

(5) The compact between the State of California and the Bishop Paiute Tribe, executed on September 10, 1999.

(6) The compact between the State of California and the Blue Lake Rancheria, executed on September 10, 1999.

(7) The compact between the State of California and the Buena Vista Band of Me-wuk Indians, executed on September 10, 1999.

(8) The compact between the State of California and the Cabazon Band of Mission Indians, executed on September 10, 1999.

(9) The compact between the State of California and the Cahto Tribe of Laytonville, executed on September 10, 1999.

(10) The compact between the State of California and the Cahuilla Band of Mission Indians, executed on September 10, 1999.

(11) The compact between the State of California and the Campo Band of Mission Indians, executed on September 10, 1999.

(12) The compact between the State of California and the Chemehuevi Indian Tribe, executed on September 10, 1999.

(13) The compact between the State of California and the Chicken Ranch Rancheria, executed on September 10, 1999.

(14) The compact between the State of California and the Coast Indian Community of the Resighini Rancheria, executed on September 10, 1999.

(15) The compact between the State of California and the Colusa Indian Community, executed on September 10, 1999.

(16) The compact between the State of California and the Dry Creek Rancheria Band of Pomo Indians, executed on September 10, 1999.

(17) The compact between the State of California and the Elk Valley Rancheria, executed on September 10, 1999.

(18) The compact between the State of California and the Ewiiaapaayp Band of Kumeyaay, executed on September 10, 1999.

(19) The compact between the State of California and the Hoopa Valley Tribe, executed on September 10, 1999.

(20) The compact between the State of California and the Hopland Band of Pomo Indians, executed on September 10, 1999.

(21) The compact between the State of California and the Jackson Band of Mi-Wuk Indians, executed on September 10, 1999.

(22) The compact between the State of California and the Jamul Indian Reservation, executed on September 10, 1999.

(23) The compact between the State of California and the La Jolla Indian Reservation, executed on September 10, 1999.

(24) The compact between the State of California and the Manzanita Tribe of Kumeyaay Indians, executed on September 10, 1999.

(25) The compact between the State of California and the Mesa Grande Band of Mission Indians, executed on September 10, 1999.

(26) The compact between the State of California and the Middletown Rancheria Band of Pomo Indians, executed on September 10, 1999.

(27) The compact between the State of California and the Morongo Band of Mission Indians, executed on September 10, 1999.

(28) The compact between the State of California and the Mooretown Rancheria Concow Maidu Tribe, executed on September 10, 1999.

(29) The compact between the State of California and the Pala Band of Mission Indians, executed on September 10, 1999.

(30) The compact between the State of California and the Paskenta Band of Nomlaki Indians, executed on September 10, 1999.

(31) The compact between the State of California and the Pechanga Band of Luiseno Indians, executed on September 10, 1999.

(32) The compact between the State of California and the Picayune Rancheria of Chukchansi Indians, executed on September 10, 1999.

(33) The compact between the State of California and the Quechan Nation, executed on September 10, 1999.

(34) The compact between the State of California and the Redding Rancheria, executed on September 10, 1999.

(35) The compact between the State of California and the Rincon, San Luiseno Band of Mission Indians, executed on September 10, 1999.

(36) The compact between the State of California and the Rumsey Band of Wintun Indians, executed on September 10, 1999.

(37) The compact between the State of California and the Robinson Rancheria Band of Pomo Indians, executed on September 10, 1999.

(38) The compact between the State of California and the Rohnerville Rancheria, executed on September 10, 1999.

(39) The compact between the State of California and the San Manuel Band of Mission Indians, executed on September 10, 1999.

(40) The compact between the State of California and the San Pasqual Band of Mission Indians, executed on September 10, 1999.

(41) The compact between the State of California and the Santa Rosa Rancheria Tachi Tribe, executed on September 10, 1999.

(42) The compact between the State of California and the Santa Ynez Band of Chumash Indians, executed on September 10, 1999.

(43) The compact between the State of California and the Sherwood Valley Rancheria Band of Pomo Indians, executed on September 10, 1999.

(44) The compact between the State of California and the Shingle Springs Band of Miwok Indians, executed on September 10, 1999.

(45) The compact between the State of California and the Smith River Rancheria, executed on September 10, 1999.

(46) The compact between the State of California and the Soboba Band of Mission Indians, executed on September 10, 1999.

(47) The compact between the State of California and the Susanville Indian Rancheria, executed on September 10, 1999.

(48) The compact between the State of California and the Sycuan Band of Kumeyaay Indians, executed on September 10, 1999.

(49) The compact between the State of California and the Table Mountain Rancheria, executed on September 10, 1999.

(50) The compact between the State of California and the Trinidad Rancheria, executed on September 10, 1999.

(51) The compact between the State of California and the Tule River Indian Tribe, executed on September 10, 1999.

(52) The compact between the State of California and the Tuolumne Band of Me-wuk Indians, executed on September 10, 1999.

(53) The compact between the State of California and the Twenty Nine Palms Band of Mission Indians, executed on September 10, 1999.

(54) The compact between the State of California and the Tyme Maidu Tribe, Berry Creek Rancheria, executed on September 10, 1999.

(55) The compact between the State of California and the United Auburn Indian Community, executed on September 10, 1999.

(56) The compact between the State of California and the Viejas Band of Kumeyaay Indians, executed on September 10, 1999.

(57) The compact between the State of California and the Coyote Valley Band of Pomo Indians, executed on September 10, 1999.

(b) Any other tribal-state gaming compact entered into between the State of California and a federally recognized Indian tribe which is executed after September 10, 1999, is hereby ratified if both of the following are true:

(1) The compact is identical is all material respects to any of the compacts expressly ratified pursuant to subdivision (a). A compact shall be deemed to be materially identified to a compact ratified pursuant to subdivision (a) if the Governor certifies it is materially identical at the time he or she submits it to the Legislature.

(2) The compact is not rejected by each house of the Legislature, two-thirds of the membership thereof concurring, within 30 days of the date of the submission of the compact to the Legislature by the Governor. However, if the 30-day period ends during a joint recess of the Legislature, the period shall be extended until the fifteenth day following the day on which the Legislature reconvenes.

(c) The Legislature acknowledges the right of federally recognized Indian tribes to exercise their sovereignty to negotiate and enter into tribal-state gaming compacts that are materially different from the compacts ratified pursuant to subdivision (a). These compacts shall be ratified by a statute approved by each house of the Legislature, a majority of the members thereof concurring, and signed by the Governor, unless the statute contains implementing or other provisions requiring a supermajority vote, in which case the statute shall be approved in the manner required by the Constitution.

(d) The Governor is the designated state officer responsible for negotiating and executing, on behalf of the state, tribal-state gaming compacts with federally recognized Indian tribes located within the State of California pursuant to the federal Indian Gaming Regulatory Act of 1988 (18 U.S.C. Sec. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701

et seq.) for the purpose of authorizing class III gaming, as defined in that act, on Indian lands within this state. Nothing in this section shall be construed to deny the existence of the Governor's authority to have negotiated and executed tribal-state gaming compacts prior to the effective date of this section.

(e) Following completion of negotiations conducted pursuant to subdivision (b) or (c), the Governor shall submit a copy of any executed tribal-state compact to both houses of the Legislature for ratification, and shall submit a copy of the executed compact to the Secretary of State for purposes of subdivision (f).

(f) Upon receipt of a statute ratifying a tribal-state compact negotiated and executed pursuant to subdivision (c), or upon the expiration of the review period described in subdivision (b), the Secretary of State shall forward a copy of the executed compact and the ratifying statute, if applicable, to the Secretary of the Interior for his or her review and approval, in accordance with paragraph (8) of subsection (d) of Section 2710 of Title 25 of the United States Code.

(g) In deference to tribal sovereignty, neither the execution of a tribal-state gaming compact nor the on-reservation impacts of compliance with the terms of a tribal-state gaming compact shall be deemed to constitute a project for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

SEC. 2. Section 12012.75 is added to the Government Code, to read:

12012.75. There is hereby created in the State Treasury a special fund called the "Indian Gaming Revenue Sharing Trust Fund" for the receipt and deposit of moneys derived from gaming device license fees that are paid into the fund pursuant to the terms of tribal-state gaming compacts for the purpose of making distributions to noncompact tribes. Moneys in the Indian Gaming Revenue Sharing Trust Fund shall be available to the California Gambling Control Commission, upon appropriation by the Legislature, for the purpose of making distributions to noncompact tribes, in accordance with distribution plans specified in tribal-state gaming compacts.

SEC. 3. Section 12012.85 is added to the Government Code, to read:

12012.85. There is hereby created in the State Treasury a fund called the "Indian Gaming Special Distribution Fund" for the receipt and deposit of moneys received by the state from Indian tribes pursuant to the terms of tribal-state gaming compacts. These moneys shall be available for appropriation by the Legislature for the following purposes:

(a) Grants, including any administrative costs, for programs designed to address gambling addiction.

(b) Grants, including any administrative costs, for the support of state and local government agencies impacted by tribal government gaming.

(c) Compensation for regulatory costs incurred by the State Gaming Agency and the Department of Justice in connection with the implementation and administration of tribal-state gaming compacts.

(d) Any other purpose specified by law.

CHAPTER 875

An act to add Section 1104 to the Public Contract Code, relating to public contracts.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1104 is added to the Public Contract Code, to read:

1104. No local public entity, charter city, or charter county shall require a bidder to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications on public works projects, except on clearly designated design build projects. Nothing in this section shall be construed to prohibit a local public entity, charter city, or charter county from requiring a bidder to review architectural or engineering plans and specifications prior to submission of a bid, and report any errors and omissions noted by the contractor to the architect or owner. The review by the contractor shall be confined to the contractor's capacity as a contractor, and not as a licensed design professional.

SEC. 2. The Legislature finds and declares that it is against public policy and of statewide concern on local public works projects to require a bidder to certify and be responsible for the completeness and accuracy of architectural or engineering plans and specifications, except on clearly designated design build projects.

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 876

An act to amend Section 2079.10a of, to add Section 1102.17 to, to add Article 1.7 (commencing with Section 1103) to Chapter 2 of Title 4 of Part 4 of Division 2 of, and to repeal Section 1102.6c of, the Civil Code, to amend Sections 8589.3, 8589.4, and 51183.5 of the Government Code, and to amend Sections 2621.9, 2694, and 4136 of the Public Resources Code, relating to real property disclosures.

[Approved by Governor October 8, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1102.6c of the Civil Code is repealed.

SEC. 2. Section 1102.17 is added to the Civil Code, to read:

1102.17. The seller of residential real property subject to this article who has actual knowledge that the property is affected by or zoned to allow an industrial use described in Section 731a of the Code of Civil Procedure shall give written notice of that knowledge as soon as practicable before transfer of title.

SEC. 3. Article 1.7 (commencing with Section 1103) is added to Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code, to read:

Article 1.7. Disclosure of Natural Hazards Upon Transfer of Residential Property

1103. (a) Except as provided in Section 1103.2, 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 any real property described in subdivision (c), 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 1103.2, 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, that is classified as personal property intended for use as a residence, or a mobilehome, as defined in Section 18008 of the Health and Safety Code, that is classified as personal property intended for use as a residence, if the real property on which the manufactured home or mobilehome is located is real property described in subdivision (c).

(c) This article shall apply to the transactions described in subdivisions (a) and (b) only if the transferor or his or her agent are required by one or more of the following to disclose the property's location within a hazard zone:

(1) A person who is acting as an agent for a transferor of real property that is located within a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a special flood hazard area if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a special flood hazard area.

(B) The local jurisdiction has compiled a list, by parcel, of properties that are within the special flood hazard area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(2) A person who is acting as an agent for a transferor of real property that is located within an area of potential flooding, designated pursuant to Section 8589.5 of the Government Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within an area of potential flooding if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within an inundation area.

(B) The local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(3) A transferor of real property that is located within a very high fire hazard severity zone, designated pursuant to Section 51178 of the Public Resources Code, shall disclose to any prospective transferee the fact that the property is located within a very high fire hazard severity zone and is subject to the requirements of Section 51182 if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a very high fire hazard severity zone.

(B) A map that includes the property has been provided to the local agency pursuant to Section 51178 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the local agency.

(4) A person who is acting as an agent for a transferor of real property that is located within an earthquake fault zone, designated pursuant to Section 2622 of the Public Resources Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a delineated earthquake fault zone if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a delineated earthquake fault zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 2622 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(5) A person who is acting as an agent for a transferor of real property that is located within a seismic hazard zone, designated pursuant to Section 2696 of the Public Resources Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a seismic hazard zone if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a seismic hazard zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 2696 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(6) A transferor of real property that is located within a state responsibility area determined by the board, pursuant to Section 4125 of the Public Resources Code, shall disclose to any prospective transferee the fact that the property is located within a wildland area that may contain substantial forest fire risks and hazards and is subject to the requirements of Section 4291 if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a wildland fire zone.

(B) A map that includes the property has been provided to the city or county pursuant to Section 4125 of the Public Resources Code and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(d) Any waiver of the requirements of this article is void as against public policy.

1103.1. (a) This article does not apply to the following transfers:

(1) 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.

(2) 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.

(3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(4) Transfers from one coowner to one or more other coowners.

(5) Transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(6) Transfers between spouses resulting from a judgment of dissolution of marriage or of legal separation of the parties or from a property settlement agreement incidental to that judgment.

(7) 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.

(8) 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.

(9) Transfers or exchanges to or from any governmental entity.

(b) Transfers not subject to this article may be subject to other disclosure requirements, including those under Sections 8589.3, 8589.4, and 51183.5 of the Government Code and Sections 2621.9, 2694, and 4136 of the Public Resources Code. In transfers not subject to this article, agents may make required disclosures in a separate writing.

1103.2. (a) The disclosures required by this article are set forth in, and shall be made on a copy of, the following Natural Hazard Disclosure Statement:

NATURAL HAZARD DISCLOSURE STATEMENT

This statement applies to the following property: _____

The transferor and his or her agent(s) disclose the following information with the knowledge that even though this is not a warranty, prospective transferees may rely on this information in deciding whether and on what terms to purchase the subject property. Transferor hereby authorizes any agent(s) representing any principal(s) in this action to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

The following are representations made by the transferor and his or her agent(s) based on their knowledge and maps drawn by the state and federal governments. This information is a disclosure and is not intended to be part of any contract between the transferee and the transferor.

THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA(S):

A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V") designated by the Federal Emergency Management Agency.

Yes _____ No _____ Do not know and information not available from local jurisdiction _____

AN AREA OF POTENTIAL FLOODING shown on a dam failure inundation map pursuant to Section 8589.5 of the Government Code.

Yes _____ No _____ Do not know and information not available from local jurisdiction _____

A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to Section 51178 or 51179 of the Government Code. The owner of this property is subject to the maintenance requirements of Section 51182 of the Government Code.

Yes _____ No _____

A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS pursuant to Section 4125 of the Public Resources Code. The owner of this property is subject to the maintenance requirements of Section 4291 of the Public Resources Code. Additionally, it is not the state's responsibility to provide fire protection services to any building or structure located within the wildlands unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142 of the Public Resources Code.

Yes _____ No _____

AN EARTHQUAKE FAULT ZONE pursuant to Section 2622 of the Public Resources Code.

Yes _____ No _____

A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code.

Yes (Landslide Zone)_____ Yes (Liquefaction Zone) ____
No _____ Map not yet released by state _____

THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

Transferor represents that the information herein is true and correct to the best of the transferor's knowledge as of the date signed by the transferor.

Signature of Transferor _____ Date _____

Agent represents that the information herein is true and correct to the best of the agent's knowledge as of the date signed by the agent.

Signature of Agent _____ Date _____
Signature of Agent _____ Date _____

Transferee represents that he or she has read and understands this document.

Signature of Transferee _____ Date _____

(b) If an earthquake fault zone, seismic hazard zone, very high fire hazard severity zone, or wildland fire area map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a natural hazard area, the transferor or transferor's agent shall mark "Yes" on the Natural Hazard Disclosure Statement. The transferor or transferor's agent may mark "No" on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1103.4 that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the transferor or the transferor's agents to exercise reasonable care in making a determination under this subdivision.

(c) If the Federal Emergency Management Agency has issued a Letter of Map Revision confirming that a property is no longer within a special flood hazard area, then the transferor or transferor's agent may mark "No" on the Natural Hazard Disclosure Statement, even if the map has not yet been updated. The transferor or transferor's agent shall attach a copy of the Letter of Map Revision to the disclosure statement.

(d) If the Federal Emergency Management Agency has issued a Letter of Map Revision confirming that a property is within a special flood hazard area and the location of the letter has been posted pursuant to subdivision (g) of Section 8589.3 of the Government Code, then the transferor or transferor's agent shall mark "Yes" on the Natural Hazard Disclosure Statement, even if the map has not yet been updated. The transferor or transferor's agent shall attach a copy of the Letter of Map Revision to the disclosure statement.

(e) The disclosure required pursuant to this article may be provided by the transferor and the transferor's agent in the Local Option Real Estate Disclosure Statement described in Section 1102.6a, provided that the Local Option Real Estate Disclosure Statement includes substantially the same information and substantially the same warnings that are required by this section.

(f) The disclosure required by this article is only a disclosure between the transferor, the transferor's agents, and the transferee,

and shall not be used by any other party, including, but not limited to, insurance companies, lenders, or governmental agencies, for any purpose.

(g) In any transaction in which a transferor has accepted, prior to June 1, 1998, an offer to purchase, the transferor, or his or her agent, shall be deemed to have complied with the requirement of subdivision (a) if the transferor or agent delivers to the prospective transferee a statement that includes substantially the same information and warning as the Natural Hazard Disclosure Statement.

1103.3. (a) The transferor of any real property 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, as soon as practicable before transfer of title.

(2) In the case of transfer by a real property sales contract, as defined in Section 2985, or by a lease together with an option to purchase, or a ground lease coupled with improvements, as soon as practicable before execution of the contract. For the purpose of this subdivision, "execution" means the making or acceptance of an offer.

(b) The transferor shall indicate compliance with this article either on the receipt for deposit, the real property sales contract, the lease, any addendum attached thereto, or on a separate document.

(c) If any disclosure, or any material amendment of any disclosure, required to be made pursuant to this article 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 or the transferor's agent.

1103.4. (a) Neither the transferor nor any listing or selling agent shall be liable for any error, inaccuracy, or omission of any information delivered pursuant to this article if the error, inaccuracy, or omission was not within the personal knowledge of the transferor or the listing or selling agent, and was based on information timely provided by public agencies or by other persons providing information as specified in subdivision (c) that is required to be disclosed pursuant to this article, and ordinary care was exercised in obtaining and transmitting the information.

(b) The delivery of any information required to be disclosed by this article to a prospective transferee by a public agency or other person providing information required to be disclosed pursuant to this article shall be deemed to comply with the requirements of this article and shall relieve the transferor or any listing or selling agent of any further duty under this article with respect to that item of information.

(c) The delivery of a report or opinion prepared by a licensed engineer, land surveyor, geologist, or expert in natural hazard

discovery dealing with matters within the scope of the professional's license or expertise, shall be sufficient compliance for application of the exemption provided by subdivision (a) if the information is provided to the prospective transferee pursuant to a request therefor, whether written or oral. In responding to that request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of Section 1103.2 and, if so, shall indicate the required disclosures, or parts thereof, to which the information being furnished is applicable. Where that statement is furnished, the expert shall not be responsible for any items of information, or parts thereof, other than those expressly set forth in the statement.

1103.5. (a) After a transferor and his or her agent comply with Section 1103.2, they shall be relieved of further duty under this article with respect to those items of information. The transferor and his or her agent shall not be required to provide notice to the transferee if the information provided subsequently becomes inaccurate as a result of any governmental action, map revision, changed information, or other act or occurrence, unless the transferor or agent has actual knowledge that the information has become inaccurate.

(b) If information disclosed in accordance with this article is subsequently rendered inaccurate as a result of any governmental action, map revision, changed information, or other act or occurrence subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this article.

1103.7. Each disclosure required by this article and each act that may be performed in making the disclosure shall be made in good faith. For purposes of this article, "good faith" means honesty in fact in the conduct of the transaction.

1103.8. (a) The specification of items for disclosure in this article does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction. The legislature does 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 condition of the property and previously received reports of physical inspection noted on the disclosure form provided pursuant to Section 1102.6 or 1102.6a.

(b) Nothing in this article shall be construed to change the duty of a real estate broker or salesperson pursuant to Section 2079.

1103.9. 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 1103.3.

1103.10. Delivery of disclosures required by this article shall be by personal delivery to the transferee or by mail to the prospective transferee. For the purposes of this article, delivery to the spouse of

a transferee shall be deemed delivery to the transferee, unless provided otherwise by contract.

1103.11. Any person or entity, other than a real estate licensee licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, acting in the capacity of an escrow agent for the transfer of real property subject to this article shall not be deemed the agent of the transferor or transferee for purposes of the disclosure requirements of this article, unless the person or entity is empowered to so act by an express written agreement to that effect. The extent of that agency shall be governed by the written agreement.

1103.12. (a) If more than one licensed real estate broker is acting as an agent in a transaction subject to this article, the broker who has obtained the offer made by the transferee shall, except as otherwise provided in this article, deliver the disclosure required by this article to the transferee, unless the transferor has given other written instructions for delivery.

(b) If a licensed real estate broker responsible for delivering the disclosures under this section cannot obtain the disclosure document required and does not have written assurance from the transferee that the disclosure has been received, the broker shall advise the transferee in writing of his or her rights to the disclosure. A licensed real estate broker responsible for delivering disclosures under this section shall maintain a record of the action taken to effect compliance in accordance with Section 10148 of the Business and Professions Code.

1103.13. No transfer subject to this article shall be invalidated solely because of the failure of any person to comply with any provision of this article. However, any person who willfully or negligently violates or fails to perform any duty prescribed by any provision of this article shall be liable in the amount of actual damages suffered by a transferee.

1103.14. (a) As used in this article, "listing agent" means listing agent as defined in subdivision (f) of Section 1086.

(b) As used in this article, "selling agent" means selling agent as defined in subdivision (g) of Section 1086, exclusive of the requirement that the agent be a participant in a multiple listing service as defined in Section 1087.

SEC. 4. Section 2079.10a of the Civil Code is amended to read:

2079.10a. (a) Every lease or rental agreement for residential real property and every contract for sale of residential real property comprising one to four dwelling units, shall contain, in not less than eight-point type, the following notice:

Notice: The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or more and many other local law enforcement authorities maintain for public access a data base of the locations of persons required to

register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The data base is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.

(b) Subject to subdivision (c), upon delivery of the notice to the lessee or transferee of the real property, the lessor, seller, or broker is not required to provide information in addition to that contained in the notice regarding the proximity of registered sex offenders. The information in the notice shall be deemed to be adequate to inform the lessee or transferee about the existence of a statewide data base of the locations of registered sex offenders and information from the data base regarding those locations. The information in the notice shall not give rise to any cause of action against the disclosing party by a registered sex offender.

(c) Notwithstanding subdivisions (a) and (b), nothing in this section shall alter any existing duty of the lessor, seller, or broker under any other statute or decisional law including, but not limited to, the duties of a lessor, seller, or broker under this article, or the duties a seller or broker under Article 1.5 (commencing with Section 1102) or Chapter 2 of Title 4 of Part 4 of Division 2.

(d) Subdivision (a) of this section shall apply only to written agreements and contracts that are entered into by the parties on or after July 1, 1999.

SEC. 5. Section 8589.3 of the Government Code is amended to read:

8589.3. (a) A person who is acting as an agent for a transferor of real property that is located within a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a special flood hazard area.

(b) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The transferor, or the transferor's agent, has actual knowledge that the property is within a special flood hazard area.

(2) The local jurisdiction has compiled a list, by parcel, of properties that are within the special flood hazard area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(c) In all transactions that are subject to Section 1103 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1103.2 of the Civil Code.

(d) For purposes of the disclosure required by this section, the following persons shall not be deemed agents of the transferor:

(1) Persons specified in Section 1103.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(e) Section 1103.13 of the Civil Code shall apply to this section.

(f) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

(g) A notice shall be posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the special flood hazard area map, any relevant Letters of Map Revision from the Federal Emergency Management Agency, and any parcel list compiled by the local jurisdiction.

SEC. 6. Section 8589.4 of the Government Code is amended to read:

8589.4. (a) A person who is acting as an agent for a transferor of real property that is located within an area of potential flooding shown on an inundation map designated pursuant to Section 8589.5, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within an area of potential flooding.

(b) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The transferor, or the transferor's agent, has actual knowledge that the property is within an inundation area.

(2) The local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(c) In all transactions that are subject to Section 1103 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1103.2 of the Civil Code.

(d) For purposes of the disclosure required by this section, the following persons shall not be deemed agents of the transferor:

(1) Persons specified in Section 1103.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(e) Section 1103.13 of the Civil Code shall apply to this section.

(f) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

SEC. 7. Section 51183.5 of the Government Code is amended to read:

51183.5. (a) A transferor of real property that is located within a very high fire hazard severity zone, designated pursuant to this chapter, shall disclose to any prospective transferee the fact that the property is located within a very high fire hazard severity zone, and is subject to the requirements of Section 51182.

(b) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The transferor, or the transferor's agent, has actual knowledge that the property is within a very high fire hazard severity zone.

(2) A map that includes the property has been provided to the local agency pursuant to Section 51178, and a notice is posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the local agency.

(c) In all transactions that are subject to Section 1103 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1103.2 of the Civil Code.

(d) If the map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a very high fire hazard zone, the transferor shall mark "Yes" on the Natural Hazard Disclosure Statement. The transferor may mark "No" on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1103.4 of the Civil Code that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the transferor or the transferor's agents to exercise reasonable care in making a determination under this subdivision.

(e) Section 1103.13 of the Civil Code shall apply to this section.

(f) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

SEC. 8. Section 2621.9 of the Public Resources Code is amended to read:

2621.9. (a) A person who is acting as an agent for a transferor of real property that is located within a delineated earthquake fault zone, or the transferor, if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a delineated earthquake fault zone.

(b) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The transferor, or the transferor's agent, has actual knowledge that the property is within a delineated earthquake fault zone.

(2) A map that includes the property has been provided to the city or county pursuant to Section 2622, and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(c) In all transactions that are subject to Section 1103 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Transfer Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1103.2 of the Civil Code.

(d) If the map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a delineated earthquake fault hazard zone, the agent shall mark "Yes" on the Natural Hazard Disclosure Statement. The agent may mark "No" on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1103.4 of the Civil Code that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the transferor or the transferor's agents to exercise reasonable care in making a determination under this subdivision.

(e) For purposes of the disclosures required by this section, the following persons shall not be deemed agents of the transferor:

(1) Persons specified in Section 1103.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(f) For purposes of this section, Section 1103.13 of the Civil Code shall apply.

(g) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

SEC. 9. Section 2694 of the Public Resources Code is amended to read:

2694. (a) A person who is acting as an agent for a transferor of real property that is located within a seismic hazard zone, as designated under this chapter, or the transferor, if he or she is acting

without an agent, shall disclose to any prospective transferee the fact that the property is located within a seismic hazard zone.

(b) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The transferor, or transferor's agent, has actual knowledge that the property is within a seismic hazard zone.

(2) A map that includes the property has been provided to the city or county pursuant to Section 2622, and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(c) In all transactions that are subject to Section 1103 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Transfer Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1103.2 of the Civil Code.

(d) If the map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a seismic hazard zone, the agent shall mark "Yes" on the Natural Hazard Disclosure Statement. The agent may mark "No" on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1103.4 of the Civil Code that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the transferor or the transferor's agents to exercise reasonable care in making a determination under this subdivision.

(e) For purposes of the disclosures required by this section, the following persons shall not be deemed agents of the transferor:

(1) Persons specified in Section 1103.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(f) For purposes of this section, Section 1103.13 of the Civil Code applies.

(g) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

SEC. 10. Section 4136 of the Public Resources Code is amended to read:

4136. (a) A transferor of real property that is located within a state responsibility area determined by the board, pursuant to Section 4125, shall disclose to any prospective transferee the fact that the property is located within a wildland area that may contain substantial forest fire risks and hazards and is subject to the requirements of Section 4291.

(b) Except for property located within a county that has assumed responsibility for prevention and suppression of all fires pursuant to Section 4129, the transferor shall also disclose to any prospective transferee that it is not the state's responsibility to provide fire protection services to any building or structure located within the wildlands unless the department has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142.

(c) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The transferor, or the transferor's agent, has actual knowledge that the property is within a wildland fire zone.

(2) A map that includes the property has been provided to the city or county pursuant to Section 4125, and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(d) In all transactions that are subject to Section 1103 of the Civil Code, the disclosures required by this section shall be provided by either of the following means:

(1) The Local Option Real Estate Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1103.2 of the Civil Code.

(e) If the map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a wildland fire zone, the agent shall mark "Yes" on the Natural Hazard Disclosure Statement. The agent may mark "No" on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1103.4 of the Civil Code that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the transferor or the transferor's agents to exercise reasonable care in making a determination under this subdivision.

(f) For purposes of this section, Section 1103.13 of the Civil Code applies.

(g) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

CHAPTER 877

An act to add and repeal Section 14601.10 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 8, 1999. Filed with
Secretary of State October 10, 1999.]

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

SECTION 1. Section 14601.10 is added to the Vehicle Code, to read:

14601.10. (a) In addition to the district attorneys of the counties listed in subdivision (a) of Section 14601.9, the district attorney of the County of Santa Cruz may establish a pilot program under Section 14601.9, subject to all of the conditions and terms set forth in that section.

(b) 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 878

An act to add Section 1198.7 to the Labor Code, relating to education.

[Approved by Governor October 8, 1999. Filed with
Secretary of State October 10, 1999.]

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

SECTION 1. Section 1198.7 is added to the Labor Code, to read:

1198.7. (a) Notwithstanding Section 1198.5, an institution of higher education may provide an academic employee with access to academic peer review records in a form that does not reveal the identity of any of the reviewers.

(b) Subdivision (h) of Section 1198.5 does not apply to material that is part of an academic performance evaluation of an academic employee of an institution of higher education.

SEC. 2. Section 1 of this act shall become operative only if Senate Bill 172 of the 1999–2000 Regular Session is chaptered and becomes operative on or before January 1, 2000.

CHAPTER 879

An act to amend Sections 113823, 113996, 113997, 114020, 114060, 114265, 114317, 114321, 114322, 114325, 114332.2, and 114332.3 of, to add Article 12.5 (commencing with Section 114300) to Chapter 4 of Part 7 of, to repeal Sections 114086 and 114332.6 of, and to repeal and

add Article 12 (commencing with Section 114285) of Chapter 4 of Part 7 of, the Health and Safety Code, relating to food facilities.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 113823 of the Health and Safety Code is amended to read:

113823. "Nonprofit charitable temporary food facilities" means a temporary food facility, as defined in Section 113895, that is conducted and operated by a corporation incorporated pursuant to the Nonprofit Corporation Law (Div. 2 (commencing with Section 5000), Title 1, Corp. C.), that is exempt from taxation pursuant to paragraphs (1) to (10), inclusive, and paragraph (19) of Section 501(c) of the Internal Revenue Code and Section 23701d of the Revenue and Taxation Code.

SEC. 2. Section 113996 of the Health and Safety Code is amended to read:

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

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

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

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

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

(b) When foods containing raw or incompletely cooked animal tissues specified in this section are prepared in a microwave oven, they shall be heated at a minimum internal temperature of at least 14 degrees Celsius (25 degrees Fahrenheit) above the minimum temperatures specified in subdivision (a). During microwaving, the food shall be completely enclosed in a container and periodically stirred or rotated to assure even heat distribution. Upon the completion of microwaving, the enclosed food shall be left standing for a minimum of two minutes to assure temperature equilibrium.

This subdivision does not apply to the heating of ready-to-eat cooked foods or the defrosting of food items.

(c) A ready-to-eat salad dressing or sauce containing a raw or less-than-thoroughly cooked egg as an ingredient, and other ready-to-eat foods made from or containing eggs, comminuted meat, or single pieces of meat (including beef, veal, lamb, pork, poultry, fish, and seafood) that are raw or have not been thoroughly cooked as provided in subdivision (a) may be served if either of the following requirements are met:

(1) The consumer specifically orders that the food be individually prepared less than thoroughly cooked.

(2) The food facility notifies the consumer, orally or in writing, at the time of ordering, that the food is raw or less than thoroughly cooked.

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

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

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

SEC. 3. Section 113997 of the Health and Safety Code is amended to read:

113997. (a) 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 packing.

(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 packing.

(6) Any eggs that are unsold after four days from the date of the packing shall be stored and displayed pursuant to subdivision (a),

diverted to pasteurization, or destroyed in a manner approved by the enforcement agency.

SEC. 4. Section 114020 of the Health and Safety Code is amended to read:

114020. (a) No employee shall commit any act that may result in the contamination or adulteration of food, food contact surfaces, or utensils.

(b) All employees preparing, serving, or handling food or utensils shall wear clean, washable outer garments, or other clean uniforms. All employees shall wear hairnets, caps, or other suitable coverings to confine all hair when required to prevent the contamination of food, equipment, or utensils.

(c) All employees shall thoroughly wash their hands and that portion, if any, of their arms exposed to direct food contact by vigorously rubbing them with cleanser and warm water, paying particular attention to areas between the fingers and around and under the nails, rinsing with clean water. Employees shall wash their hands:

(1) Immediately before engaging in food preparation, including working with unpackaged food, clean equipment and utensils, and unwrapped single-service food containers and utensils.

(2) Before dispensing or serving food or handling clean tableware and serving utensils in the food service area.

(3) As often as necessary, during food preparation, to remove soil and contamination and to prevent cross-contamination when changing tasks.

(4) When switching between working with raw foods and working with ready-to-eat foods.

(5) After touching bare human body parts other than clean hands and clean, exposed portions of arms.

(6) After using the toilet room.

(7) After caring for or handling any animal allowed in a food facility pursuant to Section 114045.

(8) After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking.

(9) After handling soiled equipment or utensils.

(10) After engaging in any other activities that contaminate the hands.

(d) No employee shall expectorate or use tobacco in any form in any area where food is prepared, served, or stored, or where utensils are cleaned or stored.

(e) Food employees shall use utensils, including scoops, forks, tongs, paper wrappers, gloves, or other implements, to assemble ready-to-eat food or to place ready-to-eat food on tableware or in other containers. However, ready-to-eat food may be assembled or placed on tableware or in other containers in an approved food preparation area without using utensils by employees who comply with the hand washing requirements specified in subdivision (c).

Food that has been served to the customer and then wrapped or packaged at the direction of the customer shall be handled only with utensils. These utensils shall be properly sanitized before reuse.

(f) Gloves shall be worn when contacting food and food contact surfaces if the employee has any cuts, sores, rashes, artificial nails, nail polish, rings (other than a plain ring, such as a wedding band), uncleanable orthopedic support devices, or finger nails that are not clean, neatly trimmed, and smooth.

(g) Whenever gloves are worn, they shall be changed, replaced, or washed as often as hand washing is required in subdivision (c). When single-use gloves are used, they shall be replaced after removal.

SEC. 5. Section 114060 of the Health and Safety Code is amended to read:

114060. (a) Manual sanitization shall be accomplished in the final sanitizing rinse by one of the following:

(1) Contact with a solution of 100 ppm available chlorine solution for 30 seconds.

(2) Contact with a solution of 25 ppm available iodine for one minute.

(3) Contact with a solution of 200 ppm quaternary ammonium for one minute.

(4) Contact with water of at least 82 degrees Celsius (180 degrees Fahrenheit) for 30 seconds.

(5) Contact with any chemical sanitizer that meets the requirements of Section 178.1010 of Title 21 of the Code of Federal Regulations when used in accordance with the manufacturer's use directions as specified on the product label.

(b) In-place sanitizing shall be as described in paragraph (1), (2), (3), or (4) of subdivision (a).

(c) Other methods may be used if approved by the department.

(d) Testing equipment and materials shall be provided to adequately measure the applicable sanitization method.

(e) Chemical sanitizers shall be approved for use in food facilities and shall be used in accordance with the manufacturer's use directions as specified on the product label.

SEC. 6. Section 114086 of the Health and Safety Code is repealed.

SEC. 7. Section 114265 of the Health and Safety Code is amended to read:

114265. (a) The name, address, and telephone number of the owner, operator, permittee, business name, or commissary shall be legible, clearly visible, and permanently indicated on at least two sides of the exterior of the mobile food facility. The name shall be in letters at least 8 centimeters (3 inches) high and shall have strokes at least 1 centimeter ($^3/_8$ inch) wide, and shall be of a color contrasting with the mobile food facility exterior. Letters and numbers for address and telephone numbers shall not be less than 2.5 centimeters (one inch) high.

(b) Mobile food facility equipment, including, but not limited to, the interior of cabinet units and compartments, shall be designed so as to, and made of materials that, result in smooth, readily accessible, and easily cleanable surfaces. Unfinished wooden surfaces are prohibited. Construction joints shall be tightly fitted and sealed so as to be easily cleanable. Equipment and utensils shall be constructed of durable, nontoxic materials and shall be easily cleanable.

(c) During operation, no food intended for retail shall be conveyed, held, stored, displayed, or served from any place other than a mobile food facility except for the restocking of product in a manner approved by the enforcement agency.

(d) Notwithstanding subdivision (k), food products remaining after each day's operation shall be stored only in an approved commissary or other approved facility.

(e) During transportation, storage, and operation of a mobile food facility, food, food contact surfaces, and utensils shall be protected from contamination. Single-service utensils shall be individually wrapped or in sanitary containers or approved sanitary dispensers, stored in a clean, dry place until used, handled in a sanitary manner, and used only once. Food contact surfaces and utensils shall be cleaned and sanitized in accordance with subdivisions (i), (j), and (k) of Section 114090.

(f) All food displayed, sold, or offered for sale from a mobile food facility shall be obtained from an approved source.

(g) Food condiments shall be protected from contamination and, where available for customer self-service, be prepackaged or available only from approved dispensing devices.

(h) Mobile food facilities shall be operated within 60 meters (200 feet) of approved and readily available toilet and hand washing facilities or as otherwise approved by the enforcement agency to ensure restroom facilities are available to facility employees.

(i) All mobile food facilities shall operate out of a commissary or other approved facility in accordance with Article 12.5 (commencing with Section 114300). Mobile food facilities shall report to the commissary or other approved facility at least once each operating day for cleaning and servicing operations. Mobile food facilities shall be properly stored, cleaned, and serviced at, or within, a commissary or other facility as approved by the enforcement agency so as to provide protection from unsanitary conditions.

(j) Potentially hazardous food shall be maintained at or below 5 degrees Celsius (41 degrees Fahrenheit) or at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times in accordance with Section 113995.

(k) Potentially hazardous food held at or above 60 degrees Celsius (140 degrees Fahrenheit) on a mobile food facility shall be destroyed at the end of the operating day.

(*l*) All wastewater from a mobile food facility shall be drained to an approved wastewater receptor at the commissary or other approved facility.

(m) All new and replacement gas-fired appliances shall meet applicable American Gas Association standards. All new and replacement electrical appliances shall meet applicable Underwriters Laboratory standards. However, for units subject to Part 2 (commencing with Section 18000) of Division 13, these appliances shall comply with standards prescribed by Sections 18028, 18029.3, and 18029.5.

(n) Bulk beverage dispensers shall only be filled at the commissary or other facility approved by the enforcement agency unless a hand washing sink as described in paragraph (1) of subdivision (p) is provided.

(o) Where nonprepackaged food is handled for display or sale, the mobile food facility shall be equipped with a food compartment that completely encloses all food, food contact surfaces, and the handling of ready-to-eat food. The opening to the food compartment shall be sized as appropriate to the food handling activity without compromising the intended protection from contamination, and shall be provided with tight-fitting doors that, when closed, protect interior surfaces from dust, debris, insects, and other vermin.

(p) Mobile food facilities, not under a valid public health permit as of January 1, 1997, on which nonprepackaged ready-to-eat food is sold or offered for sale shall be constructed and equipped in compliance with all of the following:

(1) A minimum of a one-compartment metal sink, hand washing cleanser and single-service towels in approved dispensers shall be provided. The sink shall be furnished with hot running water that is at least 49 degrees Celsius (120 degrees Fahrenheit) and cold running water that is less than 38 degrees Celsius (101 degrees Fahrenheit) through a mixing-type faucet that permits both hands to be free for washing. The sink shall be large enough to accommodate the largest utensils washed. The sink, hand washing cleanser, and single-service towels shall be located as to be easily accessible and unobstructed for use by the operator in the working area. The minimum water heater capacity shall be one-half gallon.

(2) The potable water tank and delivery system shall be constructed of approved materials, provide protection from contamination, and shall be of a capacity commensurate with the level of food handling activity on the mobile food facility. The capacity of the system shall be sufficient to furnish enough hot and cold water for the following: steamtable, utensil washing and sanitizing, hand washing, and equipment cleaning. At least 18 liters (5 gallons) of water shall be provided exclusively for hand washing. Any water needed for other purposes shall be in addition to the 18 liters (5 gallons) for hand washing.

(3) (i) The wastewater tank or tanks shall have a minimum capacity that is 50 percent greater than the potable water tank or tanks supplying the hand and utensil washing sink. In no case shall this wastewater capacity be less than 28 liters (7.5 gallons).

(ii) Mobile food facilities utilizing ice in the storage, display, or service of food or beverages shall provide an additional minimum wastewater holding tank capacity equal to one-third of the volume of the ice cabinet to accommodate the drainage of ice melt.

(iii) Mobile food facilities equipped with a tank supplying product water for the preparation of a food or beverage shall provide an additional wastewater tank capacity equal to at least 15 percent of this water supply.

(iv) Additional wastewater tank capacity may be required where wastewater production or spillage is likely to occur.

(v) Any connection to a wastewater tank shall preclude the possibility of contaminating any food, food contact surface, or utensil.

(4) A mobile food facility's potable water tank inlet shall be provided with a connection of a size and type that will prevent its use for any other service and shall be constructed so that backflow and other contamination of the water supply is prevented. Hoses used to fill potable water tanks shall be made of food grade materials and handled in a sanitary manner.

(5) Mobile food facilities limited to the portioning and dispensing of nonprepackaged, nonpotentially hazardous food are exempt from the hand washing and utensil washing sink requirements of this subdivision if there is an approved supply of gloves or utensils, or both, on the facility that preclude any hand contact with the food products being dispensed. This exemption does not extend to the scooping of ice.

(q) Mobile food facilities selling unpackaged frozen ice cream bars or holding cream, milk, or similar dairy products pursuant to Section 114270 shall be equipped with refrigeration units as described in Section 113860.

(r) Operators of mobile food facilities handling nonprepackaged food shall develop and follow written operational procedures for food handling and the cleaning and sanitizing of food contact surfaces and utensils. The enforcement agency shall review and approve the procedures prior to implementation and an approved copy shall be kept on the mobile food facility during periods of operation.

(s) All potentially hazardous food shall be prepackaged in an approved food facility except as provided in Sections 114260 and 114270.

(t) Except to the extent that an alternative construction standard is explicitly prescribed by this section, construction standards for mobile food preparation units and stationary mobile food preparation units which are subject to Part 2 (commencing with Section 18000) of Division 13 shall be governed by the provisions of that part.

SEC. 8. Article 12 (commencing with Section 114285) of Chapter 4 of Part 7 of the Health and Safety Code is repealed.

SEC. 9. Article 12 (commencing with Section 114285) is added to Chapter 4 of Part 7 of the Health and Safety Code, to read:

Article 12. Mobile Food Preparation Units and Stationary Mobile Food Preparation Units

114285. This article governs sanitation, and structural and safety requirements for mobile food preparation units and stationary mobile food preparation units as defined in this chapter. Except to the extent that an alternative construction standard is explicitly prescribed by this article, construction standards for mobile food preparation units and stationary mobile food preparation units that are subject to Part 2 (commencing with Section 18000) of Division 13 shall be governed by the provisions of that part.

114286. (a) All mobile food preparation units and stationary mobile food preparation units shall meet the applicable requirements in Article 6 (commencing with Section 113975), Article 7 (commencing with Section 113990), and Article 8 (commencing with Section 114075), unless specifically exempted from any of these provisions as provided in this article.

(b) Mobile food preparation units and stationary mobile food preparation units shall be exempt from the requirements of Sections 114105 and 114135, and subdivision (b) of Section 114165.

(c) The Department of Housing and Community Development, consistent with the provisions of Chapter 4 (commencing with Section 18025) of Part 2 of Division 13 and regulations promulgated pursuant thereto, shall initially certify or recertify each mobile food preparation unit and stationary mobile food preparation unit that is either a special purpose commercial coach as defined by Section 18012.5 or a commercial coach as defined by Section 18001.8.

(d) The local enforcement agency shall initially approve all other mobile food preparation units and stationary mobile food preparation units as complying with the provisions of this article and shall require construction reapproval if deemed necessary by a local enforcement agency.

114287. All mobile food preparation units shall operate out of a commissary or other facility approved by the enforcement agency. Mobile food preparation units shall report to the commissary or other approved facility at least once each operating day for cleaning and servicing operations. Mobile food preparation units shall be stored, cleaned, and serviced at or within a commissary or other facility approved by the enforcement agency so as to be provided protection from unsanitary conditions.

114288. Stationary mobile food preparation units may include a staffed counter that serves hot and cold beverages that are not a

potentially hazardous food as defined in Section 113845, and that are dispensed from approved bulk dispensing units.

114289. (a) The enforcement agency may permit storage of supplies and food, which is not a potentially hazardous food as defined in Section 113845, in unopened containers adjacent to a stationary mobile food preparation unit, or in unopened containers in a nearby temporary storage unit.

(b) As used in this section, "unopened container" means a factory sealed container that has not been previously opened, that is suitably constructed to be resistant to contamination from moisture, dust, insects, and rodents.

114290. The operator shall maintain the exterior of the mobile food preparation unit or stationary mobile food preparation unit, and the surrounding area, as relating to the operation of the unit, in a sanitary condition.

114291. Adequate waste containers shall be furnished for the use of customers. These containers shall be of easily cleanable construction, furnished with a tight-fitting cover, and shall be kept clean.

114292. (a) The entrance doors to food preparation areas shall be self-closing and kept closed when not in use.

(b) The mobile food preparation unit or stationary mobile food preparation unit, and all equipment and utensils shall be protected from potential contamination, kept clean, in good repair, and free of vermin.

114293. (a) Spare tires, related automotive equipment, or special tools relating to the mechanical operation of the mobile food preparation unit or stationary mobile food preparation unit shall not be stored in the food preparation or food storage areas.

(b) A separate cabinet or drawer shall be installed for the storage of insecticides or other poisonous substances in accordance with Section 114025, if these substances are used. All poisonous chemicals shall be kept in this cabinet or drawer in their original containers and in a manner that offers no contamination hazard to food or utensils.

(c) Adequate facilities shall be provided for the storage of linens, uniforms, and other related linens. Facilities shall be provided for the storage of personal belongings. All personal belongings shall be kept in the space provided.

(d) All pressurized cylinders shall be securely fastened to a rigid structure of the vehicle.

(e) Adequate and suitable space shall be provided for the orderly storage of food and food service materials.

(f) Single-service utensils shall be stored in their original enclosed package, in a clean, dry area. These utensils shall be kept in an approved, enclosed dispenser for customer use. Straws shall be wrapped or dispensed from approved, enclosed dispensers. An enclosed dispenser shall protect the lip-contact portion of the eating and drinking utensil from contamination.

(g) The mobile food preparation unit potable water tank shall be filled only at the commissary.

(h) The mobile food preparation unit wastewater tank shall be drained only at the commissary.

114294. (a) The name, address, and telephone number of the owner, operator, permittee, business name, or commissary shall be legible, clearly visible, and permanently indicated on at least two sides of the exterior of the mobile food preparation unit or stationary mobile food preparation unit. The name shall be in letters at least eight-centimeters (three inches) high, and shall have a stroke at least one-centimeter ($^3/_8$ inch) wide, and shall be of a color contrasting with the vehicle exterior. Letters and numbers for address and telephone numbers shall not be less than 2.5-centimeters (one inch) high.

(b) Compressor units that are not an integral part of equipment, auxiliary engines, generators, and similar equipment, shall be installed in an area that is completely separated from food preparation and food storage and that is accessible from outside the unit for proper cleaning and maintenance.

114295. (a) Effective January 1, 2001, newly constructed mobile food preparation units and stationary mobile food preparation units shall have a sink with at least three compartments with two integral metal drainboards. The dimensions of each compartment shall be at least 30-centimeters (12 inches) wide, 30-centimeters (12 inches) long, 25-centimeters (10 inches) deep. Each drainboard shall be at least the size of one of the sink compartments. The drainboards shall be installed with at least 0.3 centimeter ($^1/_8$ inch) per foot slope toward the sink compartment, and fabricated with a minimum one-centimeter ($^1/_2$ inch) lip or rim to prevent the draining liquid from spilling onto the floor. The sink shall be equipped with a mixing faucet and shall be provided with a swivel spigot capable of servicing all sink compartments. Mobile food preparation units and stationary mobile food preparation units constructed prior to January 1, 2001, shall provide at least a two-compartment sink with dual integral drainboards unless otherwise determined by the local enforcement agency.

(b) Hand washing and utensil washing sinks shall be supplied with hot running water that is at least 49 degrees Celsius (120 degrees Fahrenheit) and cold running water that is less than 38 degrees Celsius (101 degrees Fahrenheit) through a mixing-type faucet. Hand washing cleanser and single service towels shall be provided in permanently installed dispensers and maintained at the hand washing sink. The hand washing facilities shall be located in the work area and be easily accessible and unobstructed for use by the food handlers. The hand washing facilities shall be separate from the utensil washing sink. The hand washing sink must have a minimum dimension of 23 centimeters by 23 centimeters in length and width (nine inches by nine inches), and 13 centimeters in depth (five

inches). The hand washing facilities shall be separated from the utensil washing sink by a metal splashguard with a height of at least 30 centimeters (12 inches), that extends from the back edge of the drainboard to the front edge of the drainboard, the corners of the barrier to be rounded. No splashguard is required if the distance between the hand washing sink and the utensil sink drainboards is 61 centimeters or more (24 inches or more).

(c) Floors, walls, and ceilings shall be constructed so that the surfaces are impervious, smooth, and cleanable. Floor surfaces shall provide employee safety from slipping. The juncture of the floor and wall shall be coved, with the floor surface extending up the wall at least 10 centimeters (four inches). In all mobile food preparation units and stationary mobile food preparation units, there shall be a clear, unobstructed height over the aisle of at least 188 centimeters (74 inches) from floor to ceiling, and a minimum of 76 centimeters (30 inches) of unobstructed horizontal aisle space.

(d) Construction joints and seams shall be sealed to provide smooth, easily cleanable surfaces. Soldered joints and seems shall be smooth to the touch. Silicone sealant or equivalent waterproof compounds shall be acceptable, providing they prevent the entrance of liquid waste or vermin.

(e) All equipment shall be installed so as to be easily cleaned, prevent vermin harborage, and provide adequate access for service and maintenance. Equipment shall be spaced apart or shall be sealed together for easy cleaning. There shall be a minimum of 10 centimeters (four inches) of unobstructed space provided for sanitary maintenance beneath counter mounted equipment or between the sides of adjacent equipment. Food equipment or machinery of a size and weight that can be easily picked up and moved by one person, and with a flex connection need not comply with minimum leg height requirement. Threads, nuts, or rivets shall not be exposed where they interfere with cleaning. Threads, nuts, or rivets, that interfere with cleaning, shall be sealed or capped.

(f) All floor mounted equipment shall be sealed to the floor to prevent moisture from getting under the equipment or it shall be raised at least 15 centimeters (six inches) off the floor by means of an easily cleanable leg and foot.

(g) Equipment, including the interior of cabinet units or compartments, shall be constructed so as to have smooth, easily accessible, and easily cleanable surfaces that are free from channels, crevices, flanges, ledges, sharp or jagged edges, or other cleaning or safety obstructions. Unfinished wooden surfaces are not permitted.

(h) All food contact surfaces shall be designed and constructed so as to be easily cleanable and shall be made of nontoxic, noncorrosive materials.

(i) All utensils in the mobile food preparation unit shall be stored so as to prevent their being thrown about in the event of a sudden stop, collision, or overturn. A safety knife holder shall be provided to

avoid loose storage of knives in cabinets, boxes, or slots along counter aisles. Knife holders shall be designed to be easily cleaned and be manufactured of materials approved by the local enforcement agency.

(j) Space around pipes, conduits, or hoses that extend through cabinets, floors, or outer walls shall be sealed. The closure shall be smooth and easily cleanable.

(k) Light bulbs and tubes shall be covered with a completely enclosed plastic safety shield or its equivalent and installed so as to not constitute a hazard to personnel or food materials.

(*l*) Waste receptacles shall be provided inside the vehicle. They shall be constructed to be smooth, nonabsorbent, and easily cleanable and shall be kept clean.

(m) No smoking signs and signs directing proper hand washing shall be posted in the food preparation area.

114296. (a) Mechanical exhaust ventilation equipment shall be provided over all cooking equipment as required to effectively remove cooking odors, smoke, steam, grease, and vapors. All mechanical exhaust ventilation equipment shall be installed and maintained in accordance with the Uniform Mechanical Code, except that for units subject to Part 2 (commencing with Section 18000) of Division 13, an alternative code adopted pursuant to Section 18028 shall govern the construction standards.

(b) The ventilation shall be adequate to provide a reasonable condition of comfort for employees.

(c) Grease filters or other means of grease extraction are required and shall be of steel construction, or other approved material, and shall be readily accessible for cleaning.

(d) Every joint and seam shall be substantially tight. No solder shall be used, except for sealing a joint or seam.

(e) Every hood shall be installed to provide for thorough cleaning of the entire hood.

(f) When grease gutters are provided they shall drain to a collecting receptacle fabricated, designed, and installed to be readily accessible for cleaning.

(g) All ducts in the exhaust system shall have a slope of at least five centimeters (two inches) per linear foot.

(h) All seams in the duct shall be substantially tight to prevent the accumulation of grease.

(i) The ducts shall have sufficient clean-outs to make the ducts readily accessible for cleaning.

(j) Makeup air shall be provided at the rate of that exhausted. Adequate makeup air may be provided from screened openings, vents in the ceiling, or mechanically through an air-conditioning system, but not from open doors or unscreened windows.

114297. (a) (1) All liquefied petroleum equipment shall be installed to meet applicable fire authority standards and this installation shall be approved by the fire authority. However, for

units subject to Part 2 (commencing with Section 18000) of Division 13, this equipment and its installation shall comply with standards prescribed by Sections 18028 and 18029.5.

(2) A properly charged and maintained minimum 10 BC-rated fire extinguisher to combat grease fires and shall be properly mounted and readily accessible on the interior of each mobile food preparation unit or stationary mobile food preparation unit.

(b) A first-aid kit shall be provided and located in a convenient area in an enclosed case.

(c) Mobile food preparation units that operate at more than one location in any calendar day, shall comply with the following additional requirements:

(1) Coffee urns, deep fat fryers, steam tables, and similar equipment shall be equipped with positive closing lids that will prevent excessive spillage of hot liquids into the interior of the unit in the event of a sudden stop, collision, or overturn. For coffee urns, as an alternative to this requirement, the urn shall be installed in a compartment that will prevent excessive spillage of coffee in the interior of the unit. Metal protective devices shall be installed on the glass liquid level sight gauges on all coffee urns.

(2) (A) Except for units subject to Part 2 (commencing with Section 18000) of Division 13, a second means of exit shall be provided in the side opposite the main exit door, or in the roof, or the rear of the unit, with an unobstructed passage of at least 61 centimeters by 91 centimeters (24 inches by 36 inches). The interior latching mechanism shall be operable by hand without special tools or key. The exit shall be labeled "Safety Exit" in contrasting colors with at least 2.5-centimeters (one-inch) high letters.

(B) For units subject to Part 2 (commencing with Section 18000) of Division 13, the size, latching, and labeling of the second means of exit shall comply with standards prescribed by Sections 18028 and 18029.5.

114298. Pass-through window service openings shall be limited to 1394 square centimeters (216 square inches) each. The service openings may not be closer together than 46 centimeters (18 inches). Each opening shall be provided with a solid or screened window, equipped with a self-closing device. Screening shall be at least 16 mesh per square inch. With the exception of the service openings, the entire food preparation and food storage area shall be enclosed with a solid, easily cleanable material. The counter surface of the service openings shall be smooth and easily cleanable.

114299. Adequate electrical power shall be provided to operate the approved exhaust, lighting, and refrigeration systems, and any other accessories and appliances that may be installed in a mobile food preparation unit or in a stationary mobile food preparation unit.

114299.5. (a) A water supply tank of sufficient capacity to furnish an adequate quantity of potable water for food preparation, cleaning, and handwashing purposes shall be provided (minimum 114 liters

(30 gallons)). Exterior hose-connection valves shall be at least five feet above the ground with an approved water connection, which is attached to the vehicle. The water supply shall be from an approved potable water source. The water system shall be designed and constructed using materials that enable water to be introduced without contamination. The water system shall deliver at least one gallon per minute to each sink basin in the unit.

(b) A water heater with a minimum capacity of 11.4 liters (three gallons) or an instantaneous heater capable of heating water to a minimum of 49 degrees Celsius (120 degrees Fahrenheit), interconnected with the potable water supply, shall be provided and shall operate independently of the vehicle engine. Hot and cold water, under pressure, shall be provided at handwashing and utensil washing sinks from mixing faucets.

(c) The liquid waste tank shall have a capacity at least 50 percent greater than the potable water tank. When ice is utilized in the storage or display of foods or beverages, an additional minimum liquid waste tank holding capacity equal to one-third of the volume of the ice bin shall be provided for drainage of the ice melt.

(d) All tanks, lines, couplings, valves, and all other plumbing shall be designed, installed, maintained, and constructed of materials that will not contaminate the water supply, food, utensils, or equipment.

(e) Water and wastewater storage tanks shall be installed so as to be easily drained, flushed, and cleaned with an easily accessible outlet. Breather tubes or overflow pipe openings shall be protected from the entrance of dust, insects, and other contamination. All waste lines shall be connected to the waste tank with watertight seals.

(f) Adequate toilet facilities for use by the food service personnel shall be available within 60 meters (200 feet) of the mobile food preparation unit or stationary mobile food preparation unit whenever it is stopped to conduct business for more than a one-hour period.

(g) Hoses inside the mobile food preparation unit, stationary mobile food preparation unit, and potable water tank connectors shall have matching connecting devices. Devices for external cleaning shall not be used for potable water purposes inside the mobile food preparation unit or stationary mobile food preparation unit.

(h) Hoses and faucets equipped with quick connect and disconnect devices for these purposes shall be deemed to meet the requirements of this section.

(i) Mechanical refrigeration shall conform to the requirements of Section 113860.

SEC. 10. Article 12.5 (commencing with Section 114300) is added to the Health and Safety Code, to read:

Article 12.5. Commissaries

114300. This article governs sanitation requirements for commissaries servicing mobile food preparation units and mobile food facilities.

114301. All commissaries, and other approved facilities shall meet the applicable requirements in Article 6 (commencing with Section 113975), Article 7 (commencing with Section 113990), and Article 8 (commencing with Section 114075).

114302. (a) Adequate facilities shall be provided for the sanitary disposal of liquid waste from the mobile food preparation unit or mobile food facility being serviced.

(b) Adequate facilities shall be provided for the handling and disposal of garbage and rubbish originating from the mobile food preparation unit or mobile food facility.

114303. (a) Potable water shall be available for filling the water tanks of each mobile food preparation unit or mobile food facility that requires potable water. Faucets and other potable water sources shall be constructed, located, and maintained so as to minimize the possibility of contaminating the water being loaded.

(b) The hose used for filling water tanks shall be food grade, constructed of materials approved for potable water distribution, and shall be used for no other purposes. At all times, the hose shall be kept above the ground and protected from contamination. Liquid waste lines shall not be the same color as hoses used for potable water.

(c) Hot and cold water, under pressure, shall be available for cleaning the mobile food preparation unit or mobile food facility.

(d) The potable water supply shall be protected at all times from potential backflow. Approved backflow prevention devices shall be installed on the discharge side of all hose bibs.

114304. Adequate electrical outlets shall be provided for mobile food preparation units or mobile food facilities that require electrical service. The outlets shall be constructed to comply with applicable electrical codes.

SEC. 11. Section 114317 of the Health and Safety Code is amended to read:

114317. Food-related and utensil-related equipment used in conjunction with a temporary food facility shall be approved by the local enforcement agency.

SEC. 12. Section 114321 of the Health and Safety Code is amended to read:

114321. At least one toilet facility for each 15 employees shall be provided within 60 meters (200 feet) of each temporary food facility. Each toilet facility shall be provided with hand washing facilities equipped with hot and cold running water. Hand washing cleanser and single-use sanitary towels shall be provided in permanently installed dispensers at each hand washing facility. Temporary food facilities that handle only prepackaged foods may provide cold water

with a germicidal soap in lieu of hot and cold running water at the hand washing facilities. The local enforcement agency may allow hand washing facilities other than those required by this section when it deems that the alternate facilities are adequate.

SEC. 13. Section 114322 of the Health and Safety Code is amended to read:

114322. Adequate janitorial facilities shall be provided for the cleaning of the temporary food facilities, restrooms, and all shared utensil washing and hand washing facilities. Janitorial facilities shall be provided with hot and cold running water from a mixing valve. The local enforcement agency may allow janitorial facilities other than those required by this section when it deems that the alternate facilities are adequate.

SEC. 14. Section 114325 of the Health and Safety Code is amended to read:

114325. (a) An adequate supply of potable hot water, at least 48 degrees Celsius (120 degrees Fahrenheit) shall be provided for utensil washing, hand washing, and janitorial purposes. The water supply shall be from a source approved by the enforcement agency. The potable water supply shall be protected with a backflow or back siphonage protection device, as required by applicable plumbing codes.

(b) Adequate potable water shall be provided, commensurate with the food handling activities taking place in the temporary food facility. In addition to the water needed for food preparation and dispensing, at least 75.8 liters (20 gallons) of potable water shall be provided per temporary food facility per day of operation for utensil washing and hand washing.

(c) The inlet to a potable water tank shall be provided with a connection of a size and type that will prevent its use for any other service, and shall be constructed so that backflow and other contamination of the water supply is prevented. Hoses used to fill potable water tanks shall be made of food grade materials and handled in a sanitary manner.

SEC. 15. Section 114332.2 of the Health and Safety Code is amended to read:

114332.2. (a) Except where all food and beverage is prepackaged, hand washing, and utensil washing facilities approved by the enforcement officer shall be provided within nonprofit charitable temporary food facilities.

(b) Facilities for the sanitary disposal of all liquid waste shall be subject to the approval of the enforcement officer.

(c) At least one toilet facility for each 15 employees shall be provided within 60 meters (200 feet) of each nonprofit charitable temporary food facility.

(d) Food contact surfaces shall be smooth, easily cleanable, and nonabsorbent.

SEC. 16. Section 114332.3 of the Health and Safety Code is amended to read:

114332.3. (a) No potentially hazardous food or beverage stored or prepared in a private home may be offered for sale, sold, or given away from a nonprofit charitable temporary food facility. Potentially hazardous food shall be prepared in a food establishment or on the premises of a nonprofit charitable temporary food facility.

(b) All food and beverage shall be protected at all times from unnecessary handling and shall be stored, displayed, and served so as to be protected from contamination.

(c) Potentially hazardous food and beverage shall be maintained at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times.

(d) Ice used in beverages shall be protected from contamination and shall be maintained separate from ice used for refrigeration purposes.

(e) All food and food containers shall be stored off the floor on shelving or pallets located within the facility.

(f) Smoking is prohibited in nonprofit charitable temporary food facilities.

(g) (1) Except as provided in paragraph (2), live animals, birds, or fowl shall not be kept or allowed in nonprofit charitable temporary food facilities.

(2) Paragraph (1) does not prohibit the presence, in any room where food is served to the public, guests, or patrons, of a guide dog, signal dog, or service dog, as defined by Section 54.1 of the Civil Code, accompanied by a totally or partially blind person, deaf person, person whose hearing is impaired, or handicapped person, or dogs accompanied by persons licensed to train guide dogs for the blind pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code.

(3) Paragraph (1) does not apply to dogs under the control of uniformed law enforcement officers or of uniformed employees of private patrol operators and operators of a private patrol service who are licensed pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, while these employees are acting within the course and scope of their employment as private patrol persons.

(4) The persons and operators described in paragraphs (2) and (3) are liable for any damage done to the premises or facilities by the dog.

(5) The dogs described in paragraphs (2) and (3) shall be excluded from food preparation and utensil wash areas. Aquariums and aviaries shall be allowed if enclosed so as not to create a public health problem.

(h) All garbage shall be disposed of in a manner approved by the enforcement officer.

(i) Employees preparing or handling food shall wear clean clothing and shall keep their hands clean at all times.

SEC. 17. Section 114332.6 of the Health and Safety Code is repealed.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 880

An act to amend Sections 1808.47, 4750, 16020, 16025, 16028, 16029, 16030, 16033, 16070, 16071, 16457, and 40611 of, to add Sections 1808.24 and 4000.38 to, to repeal and add Section 4000.37 of, and to repeal Sections 1680, 16020, 16070, 16071, 16457, and 40611 of, the Vehicle Code, relating to vehicles.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1680 of the Vehicle Code is repealed.

SEC. 2. Section 1808.24 is added to the Vehicle Code, to read:

1808.24. Information regarding any motor vehicle liability insurance policy or surety bond provided to the department pursuant to Section 4000.37 or provided electronically is confidential and shall not be disclosed to any person, except to the following:

(a) A court of competent jurisdiction.

(b) A law enforcement or other governmental agency.

(c) An insurance company or its assigns to verify a record the company or its assigns previously submitted to the department.

(d) A person whose vehicle or property has been involved in an accident reported to the department, or who suffered bodily injury or death in an accident reported to the department, pursuant to

Chapter 1 (commencing with Section 16000) of Division 7, or the person's authorized representative, employer, parent, or legal guardian.

SEC. 3. Section 1808.47 of the Vehicle Code is amended to read:

1808.47. Any person who has access to confidential or restricted information from the department shall establish procedures to protect the confidentiality of those records. If any confidential or restricted information is released to any agent of a person authorized to obtain information, the person shall require the agent to take all steps necessary to ensure confidentiality and prevent the release of any information to a third party. No agent shall obtain or use any confidential or restricted records for any purpose other than the reason the information was requested.

SEC. 4. Section 4000.37 of the Vehicle Code is repealed.

SEC. 5. Section 4000.37 is added to the Vehicle Code, to read:

4000.37. (a) Upon application for renewal of registration of a motor vehicle, the department shall require that the applicant submit either a form approved by the department, but issued by the insurer, as specified in paragraph (1) or (2), or any of the items specified in paragraph (3), as evidence that the applicant is in compliance with the financial responsibility laws of this state.

(1) For vehicles covered by private passenger automobile liability policies and having coverage as described in subdivisions (a) and (b) of Section 660 of the Insurance Code, or policies and coverages for private passenger automobile policies as described in subdivisions (a) and (b) of that section and issued by an automobile assigned risk plan, the form shall include all of the following:

(A) The primary name of the insured covered by the policy or the vehicle owner, or both.

(B) The year, make, and vehicle identification number of the vehicle.

(C) The name, the National Association of Insurance Commissioners (NAIC) number, and the address of the insurance company or surety company providing a policy or bond for the vehicle.

(D) The policy or bond number, and the effective date and expiration date of that policy or bond.

(E) A statement from the insurance company or surety company that the policy or bond meets the requirements of Section 16056 or 16500.5.

(2) For vehicles covered by commercial or fleet policies, and not private passenger automobile liability policies, as described in paragraph (1), the form shall include all of the following:

(A) The name and address of the vehicle owner or fleet operator.

(B) The name, the NAIC number, and the address of the insurance company or surety company providing a policy or bond for the vehicle.

(C) The policy or bond number, and the effective date and expiration date of the policy or bond.

(D) A statement from the insurance company or surety company that the policy or bond meets the requirements of Section 16056 or 16500.5 and is a commercial or fleet policy. For vehicles registered pursuant to Article 9.5 (commencing with Section 5300) or Article 4 (commencing with Section 8050) of Chapter 4, one form may be submitted per fleet as specified by the department.

(3) In lieu of evidence of insurance as described in paragraphs (1) and (2), one of the following documents as evidence of coverage under an alternative form of financial responsibility may be provided by the applicant:

(A) An evidence form, as specified by the department, that indicates either a certificate of self-insurance or an assignment of deposit letter has been issued by the department pursuant to Sections 16053 or 16054.2.

(B) An insurance covering note or binder pursuant to Section 382 or 382.5 of the Insurance Code.

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

(1) A vehicle for which a certification has been filed pursuant to Section 4604, until the vehicle is registered for operation upon the highway.

(2) A vehicle that is owned or leased by, or under the direction of, the United States or any public entity that is included in Section 811.2 of the Government Code.

(3) A vehicle registration renewal application where there is a change of registered owner.

(4) A vehicle for which evidence of liability insurance information has been electronically filed with the department.

SEC. 6. Section 4000.38 is added to the Vehicle Code, to read:

4000.38. (a) The department may suspend, cancel, or revoke the registration of a vehicle when it determines that either of the following circumstances has occurred:

(1) The registration was obtained by providing false evidence of financial responsibility to the department.

(2) Upon notification by an insurance company that the required coverage has been canceled and a sufficient period of time has elapsed since the cancellation notification, as determined by the department, for replacement coverage to be processed and received by the department.

(b) Prior to suspending, canceling, or revoking the registration of a vehicle, the department shall notify the vehicle owner of its intent to suspend, cancel, or revoke the registration, and shall provide the vehicle owner a reasonable time, not less than 45 days in cases under paragraph (2) of subdivision (a), to provide evidence of financial responsibility or to establish that the vehicle is not being operated.

(c) Notwithstanding any other provision of this code, before a registration is reinstated after suspension, cancellation, or

revocation, there shall, in addition to any other fees required by this code, be paid to the department a fee sufficient to pay the cost of the reissuance as determined by the department.

SEC. 7. Section 4750 of the Vehicle Code is amended to read:

4750. The department shall refuse registration, or renewal or transfer of registration, upon any of the following grounds:

(a) The application contains any false or fraudulent statement.

(b) The required fee has not been paid.

(c) The registration, or renewal or transfer of registration, is prohibited by the requirements of Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code.

(d) The owner of a heavy vehicle, which is subject to the heavy vehicle use tax imposed pursuant to Section 4481 of Title 26 of the United States Code, has not presented sufficient evidence, as determined by the department, that the tax for the vehicle has been paid pursuant to that section.

(e) Evidence of financial responsibility, that is required for a vehicle registration renewal where there is no change in registered owner, has not been provided to the department pursuant to Section 4000.37 or electronically. This subdivision does not apply to any of the following:

(1) A vehicle for which a certification has been filed pursuant to Section 4604, until the vehicle is registered for operation upon the highway.

(2) A vehicle owned or leased by, or under the direction of, the United States or any public entity that is included in Section 811.2 of the Government Code.

(3) A vehicle registration renewal application where there is a change of registered owner.

SEC. 8. Section 16020 of the Vehicle Code, as amended by Section 10 of Chapter 652 of the Statutes of 1997, is amended to read:

16020. (a) Every driver and every owner of a motor vehicle shall at all times be able to establish financial responsibility pursuant to Section 16021, and shall at all times carry in the vehicle evidence of the form of financial responsibility in effect for the vehicle.

(b) "Evidence of financial responsibility" means any of the following:

(1) A form issued by an insurance company, as specified by the department pursuant to Section 4000.37.

(2) If the owner is a self-insurer, as provided in Section 16052 or a depositor, as provided in Section 16054.2, the certificate of self-insurance or the assignment of deposit letter issued by the department.

(3) An insurance covering note or binder pursuant to Section 382 or 382.5 of the Insurance Code.

(4) A showing that the vehicle is owned or leased by, or under the direction of, the United States or any public entity, as defined in Section 811.2 of the Government Code.

(c) For purposes of this section, "evidence of financial responsibility" also may be obtained by a law enforcement officer from the electronic reporting system established by the department.

(d) For purposes of this section, "evidence of financial responsibility" also includes any of the following:

(1) The number of an insurance policy or surety bond that was in effect at the time of the accident or at the time that evidence of financial responsibility is required to be provided pursuant to Section 16028, if that information is contained in the vehicle registration records of the department.

(2) The identifying motor carrier of property permit number issued by the Department of the California Highway Patrol to the motor carrier of property as defined in Section 34601, and displayed on the motor vehicle in the manner specified by the Department of the California Highway Patrol.

(3) The identifying number issued to the household goods carrier, passenger stage carrier, or transportation charter party carrier by the Public Utilities Commission and displayed on the motor vehicle in the manner specified by the commission.

(4) The identifying number issued by the Interstate Commerce Commission or its successor federal agency, if proof of financial responsibility must be presented to the issuing agency as part of the identification number issuance process, and displayed on the motor vehicle in the manner specified by the issuing agency.

(e) Evidence of financial responsibility does not include any of the identification numbers in paragraph (1), (2), (3), or (4) of subdivision (d) if the carrier is currently suspended by the issuing agency for lack or lapse of insurance or other form of financial responsibility.

SEC. 9. Section 16020 of the Vehicle Code, as added by Section 5 of Chapter 1126 of the Statutes of 1996, is repealed.

SEC. 10. Section 16025 of the Vehicle Code is amended to read:

16025. (a) Every driver involved in the accident shall, unless rendered incapable, exchange with any other driver or property owner involved in the accident and present at the scene, all of the following information:

(1) Driver's name and current residence address, driver's license number, vehicle identification number, and current residence address of registered owner.

(2) Evidence of financial responsibility, as specified in Section 16020. If the financial responsibility of a person is a form of insurance, then that person shall supply the name and address of the insurance company and the number of the insurance policy.

(b) Any person failing to comply with all of the requirements of this section is guilty of an infraction punishable by a fine not to exceed two hundred fifty dollars ($250).

SEC. 11. Section 16028 of the Vehicle Code is amended to read:

16028. (a) Upon demand of a peace officer pursuant to subdivision (b) or (c), every person who drives a motor vehicle upon a highway shall provide evidence of financial responsibility for the vehicle that is in effect at the time the demand is made. However, a peace officer shall not stop a vehicle for the sole purpose of determining whether the vehicle is being driven in violation of this subdivision.

(b) Whenever a notice to appear is issued for any alleged violation of this code, except a violation specified in Chapter 9 (commencing with Section 22500) of Division 11 or any local ordinance adopted pursuant thereto, the cited driver shall furnish written evidence of financial responsibility upon request of the peace officer issuing the citation. The peace officer shall request and write the driver's evidence of financial responsibility on the notice to appear, except when the peace officer is unable to write the driver's evidence of financial responsibility on the notice to appear due to an emergency that requires his or her presence elsewhere. If the cited driver fails to provide evidence of financial responsibility at the time the notice to appear is issued, the peace officer may issue the driver a notice to appear for violation of subdivision (a). The notice to appear for violation of subdivision (a) shall be written on the same citation form as the original violation.

(c) Whenever a peace officer, or a regularly employed and salaried employee of a city or county who has been trained as a traffic collision investigator, is summoned to the scene of an accident described in Section 16000, the driver of any motor vehicle that is in any manner involved in the accident shall furnish written evidence of financial responsibility upon the request of the peace officer or traffic collision investigator. If the driver fails to provide evidence of financial responsibility when requested, the peace officer may issue the driver a notice to appear for violation of this subdivision. A traffic collision investigator may cause a notice to appear to be issued for a violation of this subdivision, upon review of that citation by a peace officer.

(d) (1) If, at the time a notice to appear for a violation of subdivision (a) is issued, the person is driving a motor vehicle owned or leased by the driver's employer, and the vehicle is being driven with the permission of the employer, this section shall apply to the employer rather than the driver. In that case, a notice to appear shall be issued to the employer rather than the driver, and the driver may sign the notice on behalf of the employer.

(2) The driver shall notify the employer of the receipt of the notice issued pursuant to paragraph (1) not later than five days after receipt.

(e) A person issued a notice to appear for a violation of subdivision (a) may personally appear before the clerk of the court, as designated in the notice to appear, and provide written evidence of financial responsibility in a form consistent with Section 16020, showing that

the driver was in compliance with that section at the time the notice to appear for violating subdivision (a) was issued. In lieu of the personal appearance, the person may submit by mail to the court written evidence of having had financial responsibility at the time the notice to appear was issued. Upon receipt by the clerk of that written evidence of financial responsibility in a form consistent with Section 16020, further proceedings on the notice to appear for the violation of subdivision (a) shall be dismissed.

SEC. 12. Section 16029 of the Vehicle Code is amended to read:

16029. Notwithstanding any other provision of law, a violation of subdivision (a) of Section 16028 is an infraction and shall be punished as follows:

(a) Upon a first conviction, by a fine of not less than one hundred dollars ($100) and not more than two hundred dollars ($200), plus penalty assessments.

(b) Upon a subsequent conviction, occurring within three years of a prior conviction, by a fine of not less than two hundred dollars ($200) and not more than five hundred dollars ($500), plus penalty assessments.

(c) (1) At the discretion of the court, for good cause, and in addition to the penalties specified in subdivisions (a) and (b), the court may order the impoundment of the vehicle for which the owner could not produce evidence of financial responsibility in violation of subdivision (a) of Section 16028.

(2) A vehicle impounded pursuant to paragraph (1) shall be released to the legal owner of the vehicle or the legal owner's agent if all of the following conditions are met:

(A) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state.

(B) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle.

(C) The legal owner or the legal owner's agent presents foreclosure documents or an affidavit of repossession for the vehicle.

(3) (A) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to paragraph (2) shall not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, except upon presentation of evidence of financial responsibility, as defined in Section 16020, for the vehicle. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the evidence of financial responsibility that is presented is valid.

(B) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(4) A vehicle impounded under paragraph (1) shall be released to a rental car agency if the agency is either the legal owner or the registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(5) A vehicle impounded under paragraph (1) shall be released to the registered owner of the vehicle only upon presentation of evidence of financial responsibility, as defined in Section 16020, for that vehicle, and evidence that all towing and storage fees related to the seizure of the vehicle are paid.

This paragraph does not apply to a person, entity, or agency who is entitled to release of a vehicle under paragraph (2) or (4) and is either:

(A) The registered and the legal owner and is described in subparagraph (A) of paragraph (2).

(B) The registered owner or legal owner and is described in paragraph (4).

(d) It is the intent of the Legislature that fines collected pursuant to this section be used to reduce the number of uninsured drivers and not be used to generate revenue for general purposes.

(e) (1) Except as provided in this subdivision, the court shall impose a fine that is greater than the minimum fine specified in subdivision (a) or (b), and may not reduce that fine to the minimum specified fine authorized under those provisions, unless the defendant has presented the court with evidence of financial responsibility, as defined in Section 16020, for the vehicle. In no event may the court impose a fine that is less than the minimum specified in subdivision (a) or (b), or impose a fine that exceeds the maximum specified fine authorized under those subdivisions. In addition to the fine authorized under subdivision (a) or (b), the court may issue an order directing the defendant to maintain insurance coverage satisfying the financial responsibility laws for at least one year from the date of the order.

(2) Notwithstanding any other provision of law, the imposition of the fine required under subdivision (a) or (b) is mandatory upon conviction of a violation of subdivision (a) of Section 16028 and may not be waived, suspended, or reduced below the minimum fines, unless the court in its discretion reduces or waives the fine based on the defendant's ability to pay. The court may direct that the fine and penalty assessments be paid within a limited time or in installments on specified dates. The Legislature hereby declares that it is in the interest of justice that the minimum fines set forth in subdivisions (a) and (b) for these offenses be enforced by the court, as provided in this subdivision.

SEC. 13. Section 16030 of the Vehicle Code is amended to read:

16030. (a) Except as provided in subdivision (c), any person who knowingly provides false evidence of financial responsibility (1) when requested by a peace officer pursuant to Section 16028 or (2) to the clerk of the court as permitted by subdivision (e) of Section

16028, including an expired or canceled insurance policy, bond, certificate of self-insurance, or assignment of deposit letter, is guilty of a misdemeanor punishable by a fine not exceeding seven hundred fifty dollars ($750) or imprisonment in the county jail not exceeding 30 days, or by both that fine and imprisonment. Upon receipt of the court's abstract of conviction, the department shall suspend the driving privilege, effective upon the date of conviction, for a period of one year. The court shall impose an interim suspension of the person's driving privileges pursuant to Section 13550, and shall notify the driver of the suspension pursuant to Section 13106, and all driver's licenses in the possession of the driver shall be surrendered to the court pursuant to Section 13550. Any driver's license surrendered to the court pursuant to this section shall be transmitted by the court, together with the required report of the conviction, to the department within 10 days of the conviction. The suspension may not be terminated until one year has elapsed from the date of the suspension and until the person files proof of financial responsibility, as provided in Chapter 3 (commencing with Section 16430) except that the suspension shall be reinstated if the person fails to maintain proof of financial responsibility for three years.

(b) However, in lieu of suspending a person's driving privileges pursuant to subdivision (a), the court shall restrict the person's driving privileges to driving that is required in the person's course of employment, if driving of a motor vehicle is necessary in order to perform the duties of the person's primary employment. The restriction shall remain in effect for the period of suspension otherwise required by subdivision (a). The court shall provide for endorsement of the restriction on the person's driver's license, and violation of the restriction constitutes a violation of Section 14603 and grounds for suspension or revocation of the license under Section 13360.

(c) This section does not apply to a driver who is driving a motor vehicle owned or leased by the employer of the driver and driven in the course of the driver's employment with the permission of the employer.

SEC. 14. Section 16033 of the Vehicle Code is amended to read:

16033. No public entity or employee, agent, or any person or organization authorized under Section 4610 to endorse receipts or validate registration cards or potential registration cards, is liable for any loss, detriment, or injury resulting, directly or indirectly, from any of the following:

(a) Failure to request evidence of financial responsibility.

(b) Failure to notify a vehicle owner that an insurance policy has been terminated.

(c) The discretionary failure to cancel, suspend, or revoke a vehicle registration when an insurance policy has been terminated.

(d) Inaccurately recording that evidence under Section 16028 or as a result of the driver producing false or inaccurate financial responsibility information.

SEC. 15. Section 16070 of the Vehicle Code, as amended by Section 10 of Chapter 1126 of the Statutes of 1996, is amended to read:

16070. (a) Whenever a driver involved in an accident described in Section 16000 fails to provide evidence of financial responsibility, as required by Section 16020, at the time of the accident, the department shall, pursuant to subdivision (b), suspend the privilege of the driver or owner to drive a motor vehicle, including the driving privilege of a nonresident in this state.

(b) Whenever the department receives an accident report pursuant to this article which alleges that any of the drivers involved in the accident was not in compliance with Section 16020 at the time of the accident, the department shall immediately mail to that driver a notice of intent to suspend the driving privilege of that driver. The department shall suspend the driving privilege 30 days after mailing the notice, unless the driver has, prior to that date, established financial responsibility at the time of the accident, as specified in Section 16021, with the department. The suspension notice shall notify the driver of the action taken and the right to a hearing under Section 16075.

SEC. 16. Section 16070 of the Vehicle Code, as added by Section 11 of the Statutes of 1996, is repealed.

SEC. 17. Section 16071 of the Vehicle Code, as amended by Section 12 of Chapter 1126 of the Statutes of 1996, is amended to read:

16071. The department shall suspend the driving privilege of any person upon receiving notice from another state that the person's driving privilege in that state has been suspended for failure to meet the financial responsibility provisions of the law in that state, if the suspension in that state was taken on grounds that would have resulted in a suspension in this state.

SEC. 18. Section 16071 of the Vehicle Code, as added by Section 13 of Chapter 1126 of the Statutes of 1996, is repealed.

SEC. 19. Section 16457 of the Vehicle Code, as amended by Section 14 of Chapter 1126 of the Statutes of 1996, is amended to read:

16457. Whenever proof of financial responsibility is required to be filed pursuant to this chapter, no person of whom that proof is required shall drive any motor vehicle not covered by the certificate of proof of financial responsibility filed by him or her with the department, nor shall any applicant for that proof knowingly fail to disclose ownership of a motor vehicle in the application for proof of financial responsibility or to disclose any subsequently acquired motor vehicle.

SEC. 20. Section 16457 of the Vehicle Code, as added by Section 15 of Chapter 1126 of the Statutes of 1996, is repealed.

SEC. 21. Section 40611 of the Vehicle Code, as amended by Section 16 of Chapter 1126 of the Statutes of 1996, is amended to read:

40611. (a) Upon proof of correction of an alleged violation of Section 12500 or 12951, or any violation cited pursuant to Section 40610, or upon submission of evidence of financial responsibility pursuant to subdivision (e) of Section 16028, the clerk shall collect a ten dollar ($10) transaction fee for each case. The fee shall be deposited by the clerk in accordance with Section 68084 of the Government Code, and allocated monthly as follows:

(1) Thirty-three percent shall be transferred to the local governmental entity in whose jurisdiction the citation was issued for deposit in the general fund of the entity.

(2) Thirty-four percent shall be transferred to the State Treasury for deposit in the State Penalty Fund established by Section 1464 of the Penal Code.

(3) Thirty-three percent shall be deposited in the county general fund.

(b) No fee shall be imposed pursuant to this section if the violation notice is processed only by the issuing agency and no record of the action is transmitted to the court.

SEC. 22. Section 40611 of the Vehicle Code, as added by Section 17 of the Statutes of 1996, is repealed.

SEC. 23. It is the intent of the Legislature that the extension of a proof-of-financial-responsibility law, as proposed by this bill, shall proceed in conjunction with the enactment of legislation that provides a low-cost motor vehicle liability insurance policy that satisfies the financial responsibility law. To that end, this bill shall become operative only if Senate Bill 171 and Senate Bill 527 are enacted and become operative on or before January 1, 2000.

SEC. 24. 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 881

An act to amend Sections 7911 and 7911.1 of the Family Code, to amend Sections 1522, 1569.17, and 1596.871 of the Health and Safety Code, and to amend Sections 361.21, 727.1, and 11466.21 of the Welfare and Institutions Code, relating to community care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 7911 of the Family Code is amended to read:

7911. The Legislature finds and declares all of the following:

(a) The health and safety of California children placed by a county social services agency or probation department out of state pursuant to the provisions of the Interstate Compact on the Placement of Children are a matter of statewide concern.

(b) The Legislature therefore affirms its intention that the State Department of Social Services has full authority to require an assessment and placement recommendation by a county multidisciplinary team prior to placement of a child in an out-of-state group home, to investigate allegations of child abuse or neglect of minors so placed, and to ensure that out-of-state group homes, accepting California children, meet all California group home licensing standards.

(c) This section is declaratory of existing law with respect to the Governor's designation of the State Department of Social Services to act as the compact administrator and of that department to act as the single state agency charged with supervision of public social services under Section 10600 of the Welfare and Institutions Code.

SEC. 2. Section 7911.1 of the Family Code is amended to read:

7911.1. (a) Notwithstanding any other provision of law, the State Department of Social Services or its designee shall investigate any threat to the health and safety of children placed by a California county social services agency or probation department in an out-of-state group home pursuant to the provisions of the Interstate Compact on the Placement of Children. This authority shall include the authority to interview children or staff in private or review their file at the out-of-state facility or wherever the child or files may be at the time of the investigation. Notwithstanding any other provisions of law, the State Department of Social Services or its designee shall require certified out-of-state group homes to comply with the reporting requirements applicable to group homes licensed in California pursuant to Title 22 of the California Code of Regulations for each child in care regardless of whether he or she is a California placement, by submitting a copy of the required reports to the Compact Administrator within regulatory timeframes. The Compact Administrator within one business day of receiving a serious events report shall verbally notify the appropriate placement agencies and within five working days of receiving a written report from the out-of-state group home, forward a copy of the written report to the appropriate placement agencies.

(b) Any contract, memorandum of understanding, or agreement entered into pursuant to paragraph (b) of Article 5 of the Interstate Compact on the Placement of Children regarding the placement of a child out of state by a California county social services agency or

probation department shall include the language set forth in subdivision (a).

(c) The State Department of Social Services or its designee shall perform initial and continuing inspection of out-of-state group homes in order to either certify that the out-of-state group home meets all licensure standards required of group homes operated in California or that the department has granted a waiver to a specific licensing standard upon a finding that there exists no adverse impact to health and safety. Any failure by an out-of-state group home facility to make children or staff available as required by subdivision (a) for a private interview or make files available for review shall be grounds to deny or discontinue the certification. The State Department of Social Services shall grant or deny an initial certification or a waiver under this subdivision to an out-of-state group home facility that has more than six California children placed by a county social services agency or probation department by August 19, 1999. The department shall grant or deny an initial certification or a waiver under this subdivision to an out-of-state group home facility that has six or fewer California children placed by a county social services agency or probation department by February 19, 2000. Certifications made pursuant to this subdivision shall be reviewed annually.

(d) Within six months of the effective date of this section, a county shall be required to obtain an assessment and placement recommendation by a county multidisciplinary team for each child in an out-of-state group home facility. On or after March 1, 1999, a county shall be required to obtain an assessment and placement recommendation by a county multidisciplinary team prior to placement of a child in an out-of-state group home facility.

(e) Any failure by an out-of-state group home to obtain or maintain its certification as required by subdivision (c) shall preclude the use of any public funds, whether county, state, or federal, in the payment for the placement of any child in that out-of-state group home, pursuant to the Interstate Compact on the Placement of Children.

(f) (1) A multidisciplinary team shall consist of participating members from county social services, county mental health, county probation, county superintendents of schools, and other members as determined by the county.

(2) Participants shall have knowledge or experience in the prevention, identification, and treatment of child abuse and neglect cases, and shall be qualified to recommend a broad range of services related to child abuse or neglect.

(g) (1) The department may deny, suspend, or discontinue the certification of the out-of-state group home if the department makes a finding that the group home is not operating in compliance with the requirements of subdivision (c).

(2) Any judicial proceeding to contest the department's determination as to the status of the out-of-state group home

certificate shall be held in California pursuant to Section 1085 of the Code of Civil Procedure.

(h) This section shall not impact placements made pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code relating to seriously emotionally disturbed children.

(i) Only an out-of-state group home authorized by the Compact Administrator to receive state funds for the placement by a county social services agency or probation department of any child in that out-of-state group home from the effective date of this section shall be eligible for public funds pending the department's certification under this section.

SEC. 3. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, of any of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(5) An applicant and any other person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in 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 a person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(b) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified

home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the adult community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(4) (A) Any staff person, volunteer, or employee who has contact with the clients. A volunteer shall be exempt from the requirements of this subdivision if the volunteer is a relative of a client in care at the facility and is not used to replace or supplement staff in providing direct care and supervision of clients.

(B) A volunteer in an adult residential facility shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer is not used to replace or supplant staff in providing direct care and supervision of clients.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued

violations as permitted by Section 1548. The fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the State Department of Social Services, as required by that section, and the State Department of Social Services shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, or 273d or subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to

subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulation to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department

of Social Services or other approving authority shall cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(2) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(3) (A) The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice or send them by electronic transmission in a manner approved by the State Department of Social Services. A foster family home licensee or foster family agency shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence. A licensee's failure to submit fingerprints to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars ($100) per violation. The State Department of Social Services may assess penalties for continued

violations, as permitted by Section 1548. The fingerprints shall then be submitted to the State Department of Social Services for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(4) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(5) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the

imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual prescribed in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to

Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be in writing to the State Department of Social Services, 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 envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) (1) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in the district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1999. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1999, and shall become part of that department's pilot project in accordance with its long-range plan. The State Department of Social Services may charge a fee for the costs of processing a set of live-scan fingerprints.

(2) The Department of Justice shall provide a report to the Senate and Assembly fiscal committees, the Assembly Human Services Committee, and to the Senate Health and Human Services

Committee by April 15, 1999, regarding the completion of backlogged criminal record clearance requests for all facilities licensed by the State Department of Social Services and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (1).

(*l*) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 4. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a residential care facility for the elderly. The Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has been exonerated. That criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial

for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(5) An applicant and any person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1569.50. The department may also suspend the license pending an administrative hearing pursuant to Sections 1569.50 and 1569.51.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for the elderly. The facility shall maintain the copy of the certification on file as long as the care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified

nurse assistant or certified home health aide from a licensed residential care facility for the elderly pursuant to Section 1569.58.

(4) (A) Any staff person, volunteer, or employee who has contact with the clients.

(B) A volunteer shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer is not used to replace or supplement staff in providing direct care and supervision of clients.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential facility for the elderly, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, to the Department of Justice, or to comply with paragraph (1) of subdivision (g) prior to the person's employment, residence, or initial presence in the residential care facility for the elderly.

(B) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess civil penalties for continued violations as permitted by Section 1569.49. The fingerprints shall then be submitted to the State Department of Social Services for processing. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no

criminal record. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1569.49.

(2) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, or 273d, subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1569.50.

(4) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in

consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to the provisions of Sections 1203.4 and 1203.4a of the Penal Code permitting a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice or documents admissible in a criminal action pursuant to Section 969b of the Penal Code shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in

paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director shall notify in writing the licensee or the applicant of his or her decision within 60 days of receipt of all information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1569.58.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be submitted, in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred under this section.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1569.58, the licensee or facility shall not incur civil

liability or unemployment insurance liability as a result of that denial or termination.

(i) Amendments to the provisions of this section made in the 1998 calendar year shall be implemented commencing 60 days after the effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

SEC. 4.5. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a residential care facility for the elderly. The Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has been exonerated. That criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(5) An applicant and any person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1569.50. The department may also suspend the license pending an administrative hearing pursuant to Sections 1569.50 and 1569.51.

(b) In addition to the applicant, the provisions of this section shall 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.

SEC. 5. Section 1596.871 of the Health and Safety Code is amended to read:

1596.871. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a

condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a child care center or family child care home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as defined in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety.

(a) Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. No fee shall be charged by the Department of Justice or the department for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license, or for obtaining a criminal record of an applicant pursuant to this section. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b), is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(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 1596.885. The department may also suspend the license pending an administrative hearing pursuant to Section 1596.886.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a child, residing in the facility.

(C) Any person who provides care and supervision to the children.

(D) Any staff person, volunteer, or employee who has contact with the children.

(i) A volunteer providing time-limited specialized services, shall be exempt from the requirements of this subdivision if this person is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the volunteer spends no more than 16 hours per week at the facility, and the volunteer is not left alone with children in care.

(ii) A student enrolled or participating at an accredited educational institution shall be exempt from the requirements of this subdivision if the student is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the facility has an agreement with the educational institution concerning the placement of the student, the student spends no more than 16 hours per week at the facility, and the student is not left alone with children in care.

(iii) A volunteer who is a relative, legal guardian, or foster parent of a client in the facility shall be exempt from the requirements of this subdivision.

(iv) A contracted repair person retained by the facility, if not left alone with children in care, shall be exempt from the requirements of this subdivision.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in like

capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.

(F) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.

(G) 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.

(H) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal records clearance as part of an application to the Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a State Department of Education contract. The Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.

(I) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the State Department of Education who have completed a criminal records clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.

(2) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individuals exempt from the requirements under this subdivision.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the child day care facility.

(B) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency, and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess civil penalties for continued violations permitted by Sections 1596.99 and 1597.62. The fingerprints shall then be submitted to the State Department of Social Services for processing. 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 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.

(C) Documentation of the individual's clearance or exemption shall be maintained by the licensee, and shall 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. Any 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 Sections 1596.99 and 1597.62.

(2) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis of fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, or 273d, subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime

except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

(3) 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.

(4) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(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 or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a child day care facility as specified in paragraphs (3), (4), and (5) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character so as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1596.8897.

(g) Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(h) (1) For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state

or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

(i) Amendments to this section made in the 1998 calendar year shall be implemented commencing 60 days after the effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

SEC. 6. Section 361.21 of the Welfare and Institutions Code is amended to read:

361.21. (a) The court shall not order the placement of a minor in an out-of-state group home, unless the court finds, in its order of placement, that all of the following conditions have been met:

(1) The out-of-state group home is licensed or certified for the placement of minors by an agency of the state in which the minor will be placed.

(2) The out-of-state group home meets the requirements of Section 7911.1 of the Family Code.

(3) In-state facilities or programs have been determined to be unavailable or inadequate to meet the needs of the minor.

(b) At least every six months, the court shall review each placement made pursuant to subdivision (a) in order to determine compliance with that subdivision.

(c) A county shall not be entitled to receive or expend any public funds for the placement of a minor in an out-of-state group home unless the requirements of subdivisions (a) and (b) are met.

SEC. 7. Section 727.1 of the Welfare and Institutions Code is amended to read:

727.1. (a) Unless otherwise authorized by law, the court may not order the placement of a minor who is adjudged a ward of the court on the basis that he or she is a person described by either Section 601 or 602 in a private residential facility or program that provides 24-hour supervision, outside of the state, unless the court finds, in its order of placement, that all of the following conditions are met:

(1) In-state facilities or programs have been determined to be unavailable or inadequate to meet the needs of the minor.

(2) The out-of-state residential facility or program is licensed for the placement of minors by an agency of the state or states in which the minor will be placed or operates under and is inspected pursuant to standards comparable to those developed by the Board of Corrections for similar facilities or programs.

(3) The requirements of Section 7911.1 of the Family Code are met.

(b) If, upon inspection, the probation officer of the county in which the minor is adjudged a ward of the court determines that the out-of-state facility or program is not in compliance with the standards required under paragraph (2) of subdivision (a) or has an adverse impact on the health and safety of the child, the probation officer may temporarily remove the minor from the facility or program. The probation officer shall promptly inform the court of the minor's removal, and shall return the minor to the court for a hearing to review the suitability of continued out-of-state placement. The probation officer shall, within one business day of removing the child, notify the State Department of Social Services' Compact Administrator, and, within five working days, submit a written report of the findings and actions taken.

(c) The court shall review each of these placements for compliance with the requirements of subdivision (a) at least once every six months.

(d) The county shall not be entitled to receive or expend any public funds for the placement of a minor in an out-of-state group home unless the conditions of subdivision (a) and (c) are met.

SEC. 8. Section 11466.21 of the Welfare and Institutions Code is amended to read:

11466.21. (a) (1) In accordance with subdivision (b), as a condition to receive an AFDC-FC rate for a group home program or a foster family agency program that provides treatment services, the provider shall arrange to have a financial audit conducted on an annual basis.

(2) The scope of the financial audit shall include all of the programs and activities operated by the provider and shall not be limited to those funded in whole or in part by the AFDC-FC program. The financial audits shall include, but not be limited to, an evaluation of the accounting and control systems of the provider.

(3) The provider shall have its financial audit made by certified public accountants or by state-licensed public accountants who have no direct or indirect relationship with the functions or activities being audited, or with the provider, its board of directors, officers, or staff.

(4) The provider shall have its financial audits made using generally accepted auditing standards applicable to private entities organized and operated on a nonprofit basis.

(5) (A) Each provider shall have the flexibility to define the calendar months included in its fiscal year.

(B) A provider may change the definition of its fiscal year. However, the financial audit conducted following the change shall cover all of the months since the last audit, even though this may cover a period that exceeds 12 months.

(b) (1) Except as provided for in paragraph (3), as a condition to receive an AFDC-FC rate that becomes effective on or after July 1, 2000, a provider shall submit a copy of its most recent financial audit as a component of any rate application, including an annual rate application, an application for a rate for a new program of an existing or new provider, an application for a change in a program's rate classification level, and an application for a program change.

(2) A rate application shall not be considered complete until and unless the most recent financial audit of the provider is submitted to the department.

(3) (A) For the period July 1, 1999, through June 30, 2000, a new provider that was incorporated on or after October 1, 1997, shall not be required to submit a copy of a financial audit as a component of its application for an AFDC-FC rate for a new program.

(B) Effective July 1, 2000, a new provider that has been incorporated for fewer than 12 calendar months shall not be required to submit a copy of a financial audit as a component of its application for an AFDC-FC rate for a new program.

(c) The department shall develop regulations establishing a process for group home and foster family agency providers, with a total licensed capacity of 12 or fewer persons, to apply for and receive financial assistance for the conduct of the annual financial audit. In recognition of the fact that the costs of a financial audit will be higher for small providers, relative to their revenues and expenditures, than they will be for larger providers, financial assistance shall be provided on a sliding scale basis to offset the costs of the audit. An eligible provider may receive up to two thousand five hundred dollars ($2,500) annually, or one-half of the actual costs of the financial audit, whichever is less. The department shall implement this subdivision through the adoption of emergency regulations.

SEC. 9. Section 4.5 of this bill incorporates amendments to Section 1569.17 of the Health and Safety Code proposed by both this bill and SB 286. 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 1569.17 of the Health and Safety Code, and (3) this bill is enacted after SB 286, in which case Section 1569.17 of the Health and Safety Code, as amended by Section 4 of this bill, shall remain operative only until the operative date of SB 286, at which time Section 4.5 of this bill shall become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that important changes are made in provisions relating to the foster care system in California, at the earliest possible time, it is necessary that this act go into immediate effect.

CHAPTER 882

An act to amend Section 8222.5 of the Education Code, relating to child care and development services.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 8222.5 of the Education Code is amended to read:

8222.5. (a) Alternative payment programs may provide payment to child care facilities with at least 75 percent subsidized children in any of the following circumstances:

(1) There is a lack of licensed child care facilities in the area.

(2) The facility is able to meet the special needs of a particular child.

(3) Any other reason provided for by the department's regulations.

(b) It is the intent of the Legislature that the Superintendent of Public Instruction adopt regulations to implement a process whereby a child care facility may apply to the State Department of Education for funding pursuant to subdivision (a).

CHAPTER 883

An act to add Section 11580.02 to the Insurance Code, relating to insurance.

[Approved by Governor October 9, 1999. Filed with
Secretary of State October 10, 1999.]

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

SECTION 1. Section 11580.02 is added to the Insurance Code, to read:

11580.02. A liability insurer may review bills submitted for the defense of its insured, but shall not compensate a reviewer based on any of the following:

(a) A percentage of the amount by which a bill is reduced for payment.

(b) The number of claims or the cost of services for which the reviewer has denied authorization or payment.

(c) An agreement that no compensation will be due unless one or more bills are reduced for payment.

CHAPTER 884

An act to amend Section 12978 of, and to add and repeal Sections 1872.81 and 1874.8 of, the Insurance Code, relating to insurance.

[Approved by Governor October 9, 1999. Filed with
Secretary of State October 10, 1999.]

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

SECTION 1. Section 1872.81 is added to the Insurance Code, to read:

1872.81. (a) In addition to the fee imposed pursuant to Section 1872.8, each insurer doing business in this state shall pay to the commissioner an annual fee of thirty cents ($0.30) for each vehicle insured under an insurance policy it issues in this state, for expenditure as follows:

(1) An amount equivalent to twenty cents ($0.20) of the fee imposed per insured vehicle by this section shall be used for the purpose of paying for consumer service functions of the department that are related to automobile insurance. The revenues under this subdivision shall be used to improve service to consumers through the rating and underwriting services bureau, the claims services bureau, the investigations bureau, or any successor bureaus of the department that may assume the consumer service functions of these bureaus. It is the intent of the Legislature that the highest priority for use of these revenues during the 1999–00 and 2000–01 fiscal years shall be to eliminate the backlog of consumer complaints relative to automobile insurance policies, insurers selling automobile policies, and agents and brokers selling those policies. The department shall

develop a plan for the use of the revenues available under this subdivision for the purposes authorized, and shall submit the plan to the Assembly and Senate Committees on Insurance.

(2) An amount equivalent to ten cents ($0.10) of the fee imposed per insured vehicle by this section shall be used for the purpose of improving consumer functions of the department related to automobile insurance. Revenues available under this subdivision shall be used to improve consumer functions through one or more of the following: (A) the rating and underwriting services bureau, (B) the claims services bureau, (C) the investigations bureau, and (D) any successor bureau of the department that may assume automobile insurance consumer functions of these bureaus. These revenues may also be used for improving the ability of the department to respond to consumer complaints and information requests through the department's toll-free telephone number, and for improving the ability of the department to offer information about automobile insurance rates to the public. The department shall develop a plan for the use of the revenues available under this subdivision for the purpose authorized, and shall submit the plan to the Assembly and Senate Committees on Insurance.

(b) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 2. Section 1874.8 is added to the Insurance Code, to read:

1874.8. (a) Each insurer doing business in this state shall pay an annual fee to be determined by the commissioner, but not to exceed fifty cents ($0.50) annually for each vehicle insured under an insurance policy it issues in this state, in order to fund the Bureau of Fraudulent Claims and an Organized Automobile Fraud Activity Interdiction Program.

(b) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 3. Section 12978 of the Insurance Code is amended to read:

12978. Notwithstanding any other provision of law, the commissioner may increase or decrease the fees set forth in this code as necessary to allow the department to meet the appropriation authorized by the annual Budget Act. However, any increase or decrease so made shall be made only in accordance with this section, and a fee increase shall not exceed 10 percent without the prior approval of the Legislature.

A single annual increase or decrease in fees, on a fiscal year basis, may be made by the department at any time during the year provided it is announced by bulletin issued at least 90 days prior to the effective date of that increase or decrease. The bulletin shall be sent to all affected parties and to both houses of the Legislature. That fee increase or decrease may be rescinded by a majority vote of both

houses of the Legislature not later than 60 days after the issuance of the bulletin announcing the increase or decrease.

In the event the bulletin is issued during the period between August 1 and December 1 of any year, the department shall provide notice in writing of the necessity of any fee increase or decrease as proposed in the bulletin upon issuance of the bulletin to the chairperson of the committee in each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee.

If written notice is provided to the commissioner within 60 days of the issuance of the bulletin announcing the increase or decrease by any of the chairpersons that there is an objection to the fee increase or decrease, the increase or decrease shall take effect February 1 of the following year unless rescinded by a majority vote of both houses of the Legislature by that date, rather than 60 days after issuance of the bulletin.

The department shall annually project forward its workload for the subsequent three years in order to project appropriate fee levels, and shall annually make adjustments to those fees, if necessary, based on actual workload experience.

The limit on the cumulative amount that the fees may be increased or decreased shall be the amount necessary to provide sufficient moneys to carry out the projected workload within the appropriations contained in the Governor's Budget for the next succeeding fiscal year, or, to the extent that moneys received or projected to be received by the department are insufficient to carry out the projected workload within the appropriation authorized by the annual Budget Act during the then current fiscal year, an amount necessary to meet that appropriation and consistent with that projected workload.

SEC. 4. This act shall become operative only if Assembly Bill 1050 of the 1999–2000 Regular Session is enacted and becomes effective on or before January 1, 2000, in which case Section 1874.8 of the Insurance Code, as added by Assembly Bill 1050 of the 1999–2000 Regular Session, shall prevail to the extent that it provides for the allocation and distribution of funds under the program established to target organized automobile fraud activity.

CHAPTER 885

An act to amend Sections 1871.7, 1872.4, 1872.8, and 1872.95 of, to add Section 1872.45 to, and to add and repeal Sections 1874.8 and 1874.81 of, the Insurance Code, and to amend Section 1806 of the Vehicle Code, relating to insurance.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. (a) This act shall be known as the Organized Crime Prevention and Victim Protection Act of 1999.

(b) The Legislature finds that organized automobile fraud activity operating in the major urban centers of the state represents a significant portion of all individual fraud-related automobile insurance cases. These cases result in artificially higher insurance premiums for core urban areas and low-income areas of the state than for other areas of the state. Only a focused, coordinated effort by all appropriate agencies and organizations can effectively deal with this problem.

SEC. 2. Section 1871.7 of the Insurance Code is amended to read:

1871.7. (a) It is unlawful to knowingly employ runners, cappers, steerers, or other persons to procure clients or patients to perform or obtain services or benefits pursuant to Division 4 (commencing with Section 3200) of the Labor Code or to procure clients or patients to perform or obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured individual or his or her insurer.

(b) Every person who violates any provision of this section or Section 549, 550, or 551 of the Penal Code shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000), plus an assessment of not more than three times the amount of each claim for compensation, as defined in Section 3207 of the Labor Code or pursuant to a contract of insurance. The court shall have the power to grant other equitable relief, including temporary injunctive relief, as is necessary to prevent the transfer, concealment, or dissipation of illegal proceeds, or to protect the public. The penalty prescribed in this paragraph shall be assessed for each fraudulent claim presented to an insurance company by a defendant and not for each violation.

(c) The penalties set forth in subdivision (b) are intended to be remedial rather than punitive, and shall not preclude, nor be precluded by, a criminal prosecution for the same conduct. If the court finds, after considering the goals of disgorging unlawful profit, restitution, compensating the state for the costs of investigation and prosecution, and alleviating the social costs of increased insurance rates due to fraud, that such a penalty would be punitive and would preclude, or be precluded by, a criminal prosecution, the court shall reduce that penalty appropriately.

(d) The district attorney or commissioner may bring a civil action under this section. Before the commissioner may bring that action, the commissioner shall be required to present the evidence obtained to the appropriate local district attorney for possible criminal or civil filing. If the district attorney elects not to pursue the matter due to

insufficient resources, then the commissioner may proceed with the action.

(e) (1) Any interested persons, including an insurer, may bring a civil action for a violation of this section for the person and for the State of California. The action shall be brought in the name of the state. The action may be dismissed only if the court and the district attorney or the commissioner, whichever is participating, give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the district attorney and commissioner. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The local district attorney or commissioner may elect to intervene and proceed with the action within 60 days after he or she receives both the complaint and the material evidence and information. If more than one governmental entity elects to intervene, the district attorney shall have precedence.

(3) The district attorney or commissioner may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). The motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the district attorney or commissioner shall either:

(A) Proceed with the action, in which case the action shall be conducted by the district attorney or commissioner.

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person or governmental agency brings an action under this section, no person other than the district attorney or commissioner may intervene or bring a related action based on the facts underlying the pending action unless that action is authorized by another statute or common law.

(f) (1) If the district attorney or commissioner proceeds with the action, he or she shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. That person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2) (A) The district attorney or commissioner may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the district attorney or commissioner of the filing of the motion, and the court has provided the person with an opportunity for a hearing on the motion.

(B) The district attorney or commissioner may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

(C) Upon a showing by the district attorney or commissioner that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the district attorney's or commissioner's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including, but not limited to, the following:

(i) Limiting the number of witnesses the person may call.

(ii) Limiting the length of the testimony of those witnesses.

(iii) Limiting the person's cross-examination of witnesses.

(iv) Otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the district attorney or commissioner elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the district attorney or commissioner so requests, he or she shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts, at the district attorney's or commissioner's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the district attorney or commissioner to intervene at a later date upon a showing of good cause.

(4) If at any time both a civil action for penalties and equitable relief pursuant to this section and a criminal action are pending against a defendant for substantially the same conduct, whether brought by the government or a private party, the civil action shall be stayed until the criminal action has been concluded at the trial court level. The stay shall not preclude the court from granting or enforcing temporary equitable relief during the pendency of the actions. Whether or not the district attorney or commissioner proceeds with the action, upon a showing by the district attorney or commissioner that certain actions of discovery by the person initiating the action would interfere with a law enforcement or governmental agency investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay discovery for a period of not more than 180 days. A hearing on a request for the stay shall be conducted in camera. The court may extend the 180-day

period upon a further showing in camera that the agency has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subdivision (e), the district attorney or commissioner may elect to pursue its claim through any alternate remedy available to the district attorney or commissioner.

(g) (1) (A) If the district attorney or commissioner proceeds with an action brought by a person under subdivision (e), that person shall, subject to subparagraph (B), receive at least 30 percent but not more than 40 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(B) Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award those sums that it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(C) Any payment to a person under subparagraph (A) or under subparagraph (B) shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All of those expenses, fees, and costs shall be awarded against the defendant.

(2) (A) If the district attorney or commissioner does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. Except as provided in subparagraph (B), the amount shall not be less than 40 percent and not more than 50 percent of the proceeds of the action or settlement and shall be paid out of the proceeds.

(B) If the person bringing the action, as a result of a violation of this section has paid money to the defendant or to an attorney acting on behalf of the defendant in the underlying claim, then he or she shall be entitled to up to double the amount paid to the defendant or the attorney if that amount is greater than 50 percent of the proceeds. That person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All of those expenses, fees, and costs shall be awarded against the defendant.

(3) If a local district attorney has proceeded with an action under this section, one-half of the penalties not awarded to a private party, as well as any costs awarded shall go to the treasurer of the

appropriate county. Those funds shall be used to investigate and prosecute fraud, augmenting existing budgets rather than replacing them. All remaining funds shall go to the state and be deposited in the General Fund and, when appropriated by the Legislature, shall be apportioned between the Department of Justice and the Department of Insurance for enhanced fraud investigation and prevention efforts.

(4) Whether or not the district attorney or commissioner proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of this section, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the district attorney or commissioner to continue the action on behalf of the state.

(5) If the district attorney or commissioner does not proceed with the action, and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorney's fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(h) (1) In no event may a person bring an action under subdivision (e) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the Attorney General, district attorney, or commissioner is already a party.

(2) (A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the district attorney or commissioner before filing an action under this section which is based on the information.

(i) Except as provided in subdivision (j), the district attorney or commissioner is not liable for expenses that a person incurs in bringing an action under this section.

(j) In civil actions brought under this section in which the commissioner or a district attorney is a party, the court shall retain discretion to impose sanctions otherwise allowed by law, including the ability to order a party to pay expenses as provided in Sections 128.5 and 1028.5 of the Code of Civil Procedure.

(k) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. That relief shall include reinstatement with the same seniority status the employee would have had but for the discrimination, two times the amount of backpay, interest on the backpay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An employee may bring an action in the appropriate superior court for the relief provided in this subdivision. The remedies under this section are in addition to any other remedies provided by existing law.

(*l*)(1) An action pursuant to this section may not be filed more than three years after the discovery of the facts constituting the grounds for commencing the action.

(2) Notwithstanding paragraph (1) no action may be filed pursuant to this section more than eight years after the commission of the act constituting a violation of this section or a violation of Section 549, 550, or 551 of the Penal Code.

SEC. 3. Section 1872.4 of the Insurance Code is amended to read:

1872.4. (a) Any company licensed to write insurance in this state that believes that a fraudulent claim is being made shall, within 60 days after determination by the insurer that the claim appears to be a fraudulent claim, send to the Bureau of Fraudulent Claims, on a form prescribed by the department, the information requested by the form and any additional information relative to the factual circumstances of the claim and the parties claiming loss or damages that the commissioner may require. The Bureau of Fraudulent Claims shall review each report and undertake further investigation it deems necessary and proper to determine the validity of the allegations. Whenever the commissioner is satisfied that fraud, deceit, or intentional misrepresentation of any kind has been committed in the submission of the claim, he or she shall report the violations of law to the insurer, to the appropriate licensing agency, and to the district attorney of the county in which the offenses were committed, as provided by Sections 12928 and 12930. If the commissioner is satisfied that fraud, deceit, or intentional misrepresentation has not been committed, he or she shall report that determination to the insurer. If prosecution by the district attorney concerned is not begun within 60 days of the receipt of the commissioner's report, the district attorney shall inform the commissioner and the insurer as to the reasons for the lack of prosecution regarding the reported violations.

(b) This section shall not require an insurer to submit to the bureau the information specified in subdivision (a) in either of the following instances:

(1) The insurer's initial investigation indicated a potentially fraudulent claim but further investigation revealed that it was not fraudulent.

(2) The insurer and the claimant have reached agreement as to the amount of the claim and the insurer does not have reasonable grounds to believe that claim to be fraudulent.

(c) Nothing contained in this article shall relieve an insurer of its existing obligations to also report suspected violations of law to appropriate local law enforcement agencies.

(d) Any police, sheriff, disciplinary body governed by the provisions of the Business and Professions Code, or other law enforcement agency shall furnish all papers, documents, reports, complaints, or other facts or evidence to the Bureau of Fraudulent Claims, when so requested, and shall otherwise assist and cooperate with the bureau.

(e) If an insurer, at the time the insurer, pursuant to subdivision (a) forwards to the Bureau of Fraudulent Claims information on a claim that appears to be fraudulent, has no evidence to believe the insured on that claim is involved with the fraud or the fraudulent collision, the insurer shall take all necessary steps to assure that no surcharge is added to the insured's premium because of the claim.

SEC. 4. Section 1872.45 is added to the Insurance Code, to read:

1872.45. A district attorney who files a criminal complaint pursuant to Section 549 or 550 of the Penal Code shall promptly do all of the following:

(a) Notify each insurer affected by the acts that are the subject of the criminal complaint of the existence of the complaint and the names of all persons insured by the insurer who are the victims.

(b) Notwithstanding any other provision of law, when an insurer receives notification pursuant to subdivision (a), and the insurer has increased the premiums of a person who is a victim because of a claim that is the subject of the criminal complaint, the insurer shall promptly rebate to that person the increased premiums that were charged to and paid by that person.

(c) Notify the Department of Motor Vehicles of the criminal complaint and the names of all persons who are the victims.

(d) Notify all the persons who are the victims in simple understandable language that a criminal complaint has been filed and that subdivision (b) of Section 1806 of the Vehicle Code requires the Department of Motor Vehicles not to record the accident on the record of the victim.

SEC. 5. Section 1872.8 of the Insurance Code is amended to read:

1872.8. (a) Each insurer doing business in this state shall pay an annual fee to be determined by the commissioner, but not to exceed one dollar ($1) annually for each vehicle insured under an insurance

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

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

claims as provided by this subdivision or Section 1874.8, the commissioner may discontinue the distribution of funds allocated for that county and may redistribute those funds to other eligible district attorneys.

(2) The Department of the California Highway Patrol shall submit to the commissioner, for informational purposes only, a report detailing the department's proposed use of funds under this section and an annual report in the same format as required of district attorneys under paragraph (1).

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

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

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

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

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

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

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

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

SEC. 6. Section 1872.95 of the Insurance Code is amended to read:

1872.95. (a) Within existing resources, the Medical Board of California, the Board of Chiropractic Examiners, and the State Bar shall each designate employees to investigate and report on possible fraudulent activities relating to workers' compensation, motor vehicle insurance, or disability insurance by licensees of the board or the bar. Those employees shall actively cooperate with the bureau in the investigation of those activities.

(b) The Medical Board of California, the Board of Chiropractic Examiners, and the State Bar shall each report annually, on or before March 1, to the committees of the Senate and Assembly having jurisdiction over insurance on their activities established pursuant to subdivision (a) for the previous year. That report shall specify, at a minimum, the number of cases investigated, the number of cases

forwarded to the bureau or other law enforcement agencies, the outcome of all cases listed in the report, and any other relevant information concerning those cases or general activities conducted under subdivision (a) for the previous year. The report shall include information regarding activities conducted in connection with cases of suspected automobile insurance fraud.

SEC. 7. Section 1874.8 is added to the Insurance Code, to read:

1874.8. (a) Each insurer doing business in this state shall pay an annual fee to be determined by the commissioner, but not to exceed fifty cents ($0.50) annually for each vehicle insured under an insurance policy it issues in this state, in order to fund the Bureau of Fraudulent Claims and an Organized Automobile Fraud Activity Interdiction Program. The commissioner shall award three to 10 grants for a coordinated program targeted at the successful prosecution and elimination of organized automobile fraud activity. The grants may only be awarded to district attorneys.

(b) In determining whether to award a district attorney a grant, the commissioner shall consider factors indicating organized automobile fraud activity in the district attorney's county, including, but not limited to, the county's level of general criminal activity, population density, automobile insurance claims frequency, number of suspected fraudulent claims, and prior and current evidence of organized automobile fraud activity. Funding priority shall be given to those grant applications with the potential to have the greatest impact on organized automobile insurance fraud activity.

(c) All participants of a grant referred to in subdivision (a) shall coordinate their efforts and work in conjunction with the bureau, other participating agencies, and all interested insurers in this regard. Of the funds collected pursuant to this section, 42.5 percent shall be distributed to district attorneys, 42.5 percent shall be distributed to the Bureau of Fraudulent Claims, and 15 percent shall be distributed to the Department of the California Highway Patrol. Funds distributed pursuant to this section to the Bureau of Fraudulent Claims and to the Department of the California Highway Patrol shall be used to fund bureau and Department of the California Highway Patrol investigators who shall be assigned to work solely in conjunction with district attorneys who are awarded grants. Each grantee shall be notified by the Bureau of Fraudulent Claims of the investigators assigned to work with the grantee. Nothing shall prohibit the referral of any cases developed by the Bureau of Fraudulent Claims to any appropriate prosecutorial entity.

(d) A grant under this section shall be awarded on the basis of a single application for a period of three years and shall be subject where applicable to the requirements of subdivision (b) of Section 1872.8, except for the requirement that grants be awarded according to population. Continued funding of a grant shall be contingent upon a grantee's successful performance as determined by an annual review by the commissioner. Any redirection of grant funds under

this section shall be made only for good cause. The Department of the California Highway Patrol shall submit to the commissioner, for informational purposes only, an annual report on its expenditure of funds under this section in the same format as is required of grantees under this section.

(e) There shall be no prohibition against a joint application by two or more district attorneys for a grant award under this section.

(f) The bureau shall report, on or before January 1, 2005, to the committees of the Senate and Assembly having jurisdiction over insurance on the results of the grant program established by this section, including funding distributed to the Department of the California Highway Patrol.

(g) For purposes of this section "organized automobile fraud activity" means two or more persons who conspire, aid and abet, or in any other manner act together, to engage in economic automobile theft as defined in subdivision (f) of Section 1872.8, or to violate any of the following provisions in relation to an automobile insurance claim:

(1) Section 650 or 6152 of the Business and Professions Code.

(2) Section 750 of the Insurance Code.

(3) Section 549, 550, or 551 of the Penal Code.

(h) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 8. Section 1874.81 is added to the Insurance Code, to read:

1874.81. (a) The commissioner shall adopt emergency regulations establishing the criteria that shall be used to award grants to district attorneys under Section 1874.8. In addition to the requirements of subdivision (b) of Section 1874.8, the criteria shall include all of the following:

(1) Suggested ratios of investigators to attorneys that the commissioner believes would result in an effective use of funds provided through a grant, taking into consideration the enforcement plans that the commissioner anticipates will be proposed by grantees.

(2) Administrative expenses that the commissioner deems allowable, both as a percentage of a grant and by category of expense.

(3) Benchmarks suitable for measuring the attainment of the objectives of a grant.

(4) Standard data and reporting formats that the commissioner shall require all grantees to provide when reporting to the commissioner about grants.

(5) Any other criteria deemed by the commissioner to be necessary for the efficient and effective administration of this program, including a commitment for full coordination and cooperation with all organizations funded by this chapter.

(b) The regulations required by subdivision (a) shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Part 1, Division 3, Title 2 of the

Government Code), and the adoption of those regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 9. Section 1806 of the Vehicle Code is amended to read:

1806. (a) The department shall file all accident reports and abstracts of court records of convictions received under this code, and in connection therewith, shall maintain convenient records or make suitable notations in order that an individual record of each license showing the convictions of the licensee and all traffic accidents in which the individual was involved, except those where, in the opinion of a reporting officer, another individual was at fault, are readily ascertainable. At its discretion the department may file and maintain these accident reports and abstracts by electronic recording and storage media and after transcribing electronically all available data from the accident reports and abstracts of conviction may destroy the original documents. Notwithstanding any other provisions of law, the recorded facts from any electronic recording and storage device maintained by the department shall constitute evidence of the facts in any administrative actions instituted by the department.

(b) When the department receives notification pursuant to subdivision (c) of Section 1872.45 of the Insurance Code, the department shall remove from the license record of each victim any record of his or her involvement in the accident which is the subject of the criminal complaint.

SEC. 10. Notwithstanding any other provision of law, the Department of Insurance is authorized to and shall adopt emergency regulations to implement the provisions of this act.

SEC. 11. The Legislature finds and declares that this act furthers the purposes of Proposition 103 as approved by the electorate on November 8, 1988.

SEC. 12. The Legislature intends that Sections 3 and 4 of this act have retroactive effect to the extent that they are applicable to any insurance claims or actions existing on January 1, 2000.

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 shall become operative only if Senate Bill 940 of the 1999–2000 Regular Session is enacted and becomes effective on or before January 1, 2000.

CHAPTER 886

An act to amend Sections 15010 and 15012 of the Family Code, relating to family law.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 15010 of the Family Code is amended to read:

15010. (a) (1) It is the intent of the Legislature in enacting this section to establish a pilot project to be administered by the Judicial Council for the purpose of providing information to unrepresented low-income family law litigants.

(2) It is the intent of the Legislature, in creating this pilot project, to determine the most effective service delivery model to provide family law information and services to unrepresented litigants.

(3) It is the intent of the Legislature that all family law services available to litigants in the superior court of each county strive to adopt policies to most effectively coordinate their activities to ensure ease of access to unrepresented litigants and to avoid unnecessary duplication of services and administrative oversight by the Judicial Council or other oversight agencies.

(b) (1) The pilot project shall consist of three pilot project courts that shall be selected by the Judicial Council from those courts that apply to participate in the pilot project. No court shall be required to apply for the project.

(2) The pilot project courts shall establish a family law information center located in the superior court, that shall be supervised by an active member of the State Bar in good standing.

(3) In superior courts with a family law facilitator, the pilot project shall coordinate its services with the services of the family law facilitator, and in at least one pilot project court, the family law facilitator shall staff and provide the services of the family law information center.

(4) In selecting the pilot project courts, the Judicial Council shall give priority to courts in counties that the Judicial Council determines are most underserved.

(5) The pilot project courts shall determine the composition and number of additional staff necessary to provide the services mandated by this section.

(c) The family law information center shall provide, to unrepresented low-income litigants, information and services, including, but not limited to, the following:

(1) Information as to the nature of various types of relief available through the family court, including restraining orders, marital dissolution or legal separation, paternity, child or spousal support, disposition of property, and child custody and visitation, and the method to seek that relief.

(2) Information as to the pleadings necessary to be filed for relief and instructions on the proper completion of those pleadings, including information as to the importance of the information called for by the pleadings.

(3) Information concerning the requirements for proper service of court papers.

(4) Assistance in preparing orders after court proceedings consistent with the court's announced orders.

(5) Information concerning methods of enforcing court orders in family law proceedings.

(6) The family law information center shall maintain a directory of community resources, including, but not limited to, low-cost legal assistance, counseling, domestic violence shelters, parenting education, mental health services, and job placement programs.

(7) The family law information center shall encourage parties to seek legal advice and assistance from an independent attorney.

(d) For purposes of this division, "low-income" shall mean individuals whose net monthly income, after deduction of mandatory court ordered payments, is 200 percent or less of the current monthly poverty line annually established by the Secretary of Health and Human Services pursuant to the Omnibus Budget Reconciliation Act of 1981, as amended. Family law litigants, prior to receiving the services of the family law information center, shall be required to sign a declaration attesting to their financial eligibility to receive those services. No other efforts to verify financial eligibility shall be necessary.

(e) The family law information center shall provide interpreter services, to the extent available in the pilot project courts, and allow the use of translators to facilitate the services provided pursuant to subdivision (c).

(f) The Judicial Council shall promulgate guidelines for the operation of the family law information center in accordance with the Rules of Professional Conduct.

(g) The family law information center shall not represent any party. No attorney-client relationship is created between a party and the family law information center as a result of any information or services provided to the party by the family law information center pursuant to subdivision (c). The family law information center shall give conspicuous notice that no attorney-client relationship exists between the center, its staff, and the family law litigant. The notice

shall include the advice that the absence of an attorney-client relationship means that communications between the party and the family law information center are not privileged, and that the family law information center may provide services to the other party.

(h) A person employed by, or directly supervised by, an employee of the family law information center shall not make any public comment about a pending or impending proceeding in the court as provided by paragraph (9) of subdivision (B) of Canon 3 of the Code of Judicial Ethics. All persons employed by, or directly supervised by, an employee of the family law information center shall be provided a copy of paragraph (9) of subdivision (B) of Canon 3 of the Code of Judicial Ethics, and shall be required to sign an acknowledgment that he or she is aware of its provisions.

(i) The Judicial Council shall create any necessary forms to advise the parties of the types of services provided, that there is no attorney-client relationship, that the family law information center is not responsible for the outcome of any case, that the family law information center does not represent any party and will not appear in court on the party's behalf, and that the other party may also be receiving information and services from the family law information center.

(j) A pilot project court may contract with a private nonprofit entity to staff and provide the services of the family law information center; however, the family law information center must be located, and the services provided, in the superior court.

(k) The Judicial Council shall conduct an evaluation of the pilot project and shall report to the Legislature, no later than March 1, 2003, on the success of the pilot project. The evaluation shall include outcome measures that address increased access to the courts for low-income litigants and any reduced burden on the courts by having the services of the family law information center available. The evaluation shall include an assessment of the number of people using the services of the family law information center, categorized by gender and by type of information sought, including information regarding marital dissolution, paternity, or domestic violence prevention proceedings, or relating to child custody, visitation, child support, or spousal support. The evaluation shall also assess the frequency with which people seek information from the family law information center to initiate an action or to respond to an action. The pilot project shall be deemed a success if, among other things, the pilot project court assists at least 100 low-income family law litigants in each year of its operation, a majority of the judges surveyed in the pilot project court believe the family law information center helps to expedite family law cases with pro per litigants, and a majority of the persons using the family law information center evaluate the services of the family law information center favorably.

SEC. 2. Section 15012 of the Family Code is amended to read:

15012. This division shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute 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.

CHAPTER 887

An act to amend Sections 366, 366.3, 10554, 11404.1, 14051, and 16501.1, of, to add Sections 366.24, 366.25, and 16121.2 to, and to add Chapter 2.6 (commencing with Section 16170) to Part 4 of Division 9 of, the Welfare and Institutions Code, relating to human services.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 366 of the Welfare and Institutions Code is amended to read:

366. (a) (1) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Section 366.26 is completed. The court shall consider the safety of the child and shall determine all of the following:

(A) The continuing necessity for and appropriateness of the placement.

(B) The extent of the agency's compliance with the case plan in making reasonable efforts to return the child to a safe home and to complete any steps necessary to finalize the permanent placement of the child.

(C) The continuing need to suspend sibling interaction, if applicable, pursuant to subdivision (c) of Section 16002.

(D) The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care.

(2) The court shall project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(b) Subsequent to the hearing, periodic reviews of each child in foster care shall be conducted pursuant to the requirements of Sections 366.3 and 16503.

(c) If the child has been placed out of state, each review described in subdivision (a) and any reviews conducted pursuant to Sections 366.3 and 16503 shall also address whether the out-of-state placement continues to be the most appropriate placement selection and in the best interests of the child.

(d) A child shall not be placed in an out-of-state group home, or remain in an out-of-state group home, unless the group home is in compliance with Section 7911.1 of the Family Code.

SEC. 2. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a

report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or

an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the minor remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child.

(5) The extent of progress the parents have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at

reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) The progress of the search for an adoptive placement if one has not been identified.

(6) Any impediments to the adoption or the adoptive placement.

(7) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(8) The anticipated date by which an adoptive placement agreement will be signed.

(9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that 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 being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed adoption agency, or the department when it is acting as an adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of

this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the 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 as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 2.1. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the

child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom

the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the minor remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child.

(5) The extent of progress the parents have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living, including the likelihood the child will graduate from high school by his or her 19th birthday, and if not, what efforts are being made to ensure the required educational credits or equivalent vocational training will be obtained by that time.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) The progress of the search for an adoptive placement if one has not been identified.

(6) Any impediments to the adoption or the adoptive placement.

(7) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(8) The anticipated date by which an adoptive placement agreement will be signed.

(9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that 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 being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed adoption agency, or the

department when it is acting as an adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the 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 as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 2.2. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the

child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardian or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the minor remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child. The court shall consider the progress in providing, the information and documents to the child, as described in Section 391. The court shall also consider the need for, and progress in providing, the assistance and services described in paragraphs (3) and (4) of subdivision (b) of Section 391.

(5) The extent of progress the parents have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) The progress of the search for an adoptive placement if one has not been identified.

(6) Any impediments to the adoption or the adoptive placement.

(7) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(8) The anticipated date by which an adoptive placement agreement will be signed.

(9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be

returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that 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 being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed adoption agency, or the department when it is acting as an adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the 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 as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 2.3. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental

rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most

appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardian or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the minor remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child. The court shall consider the progress in providing, the information and documents to the child, as described in Section 391. The court shall also consider the need for, and progress in providing, the assistance and services described in paragraphs (3) and (4) of subdivision (b) of Section 391.

(5) The extent of progress the parents have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, place for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living, including the likelihood the child will graduate from high school by his or her 19th birthday, and if not, what efforts are being made to ensure the required educational credits or equivalent vocational training will be obtained by that time.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) The progress of the search for an adoptive placement if one has not been identified.

(6) Any impediments to the adoption or the adoptive placement.

(7) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(8) The anticipated date by which an adoptive placement agreement will be signed.

(9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that 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 being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed adoption agency, or the department when it is acting as an adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the 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 as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 3. Section 366.24 is added to the Welfare and Institutions Code, to read:

366.24. (a) Commencing January 1, 2000, for purposes of Sections 366.21 and 366.22, evidence of any 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 make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(b) For purposes of subdivision (g) of Section 366.21, the court's decision to continue the case based on a finding of substantial probability that the child will be returned to the physical custody of his or her parent or guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the child's best interests.

SEC. 4. Section 366.25 is added to the Welfare and Institutions Code, to read:

366.25. If the court does not continue a case for a permanency review hearing pursuant to paragraph (1) of subdivision (g) of Section 366.21 or order the child be held in foster care pursuant to paragraph (2) of subdivision (g) of Section 366.21, the court shall order that a hearing pursuant to Section 366.26 be held within 120 days.

SEC. 5. Section 10554 of the Welfare and Institutions Code is amended to read:

10554. The department shall adopt regulations, orders, or standards of general application to implement, interpret, or make specific the law enforced by the department, and those regulations, orders, and standards shall be adopted, amended, or repealed by the department only in accordance with the provisions of Chapter 3.5 (commencing with Section 11340), Part 1, Division 3, Title 2 of the Government Code, provided that the regulations need not be printed in the California Code of Regulations or California Administrative Register if they are included in the publications of the department.

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 the regulations.

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.

SEC. 6. Section 11404.1 of the Welfare and Institutions Code is amended to read:

11404.1. In order to be eligible for AFDC-FC, the child shall receive a periodic review no less frequently than once every six months and a permanency hearing within 12 months after the date the child entered foster care, as provided in subdivision (a) of Section 361.5. The child shall also receive permanency planning hearings periodically, but no less frequently than once each 12 months thereafter, as required by subdivision (d) of Section 366.3 throughout

the period of foster care placement. Periodic reviews and permanency planning hearings shall not be required for a child who is residing with a nonrelated legal guardian.

SEC. 7. Section 14051 of the Welfare and Institutions Code is amended to read:

14051. (a) "Medically needy person" means any of the following:

(1) An aged, blind, or disabled person who meets the definition of aged, blind, or disabled under the Supplemental Security Income Program and whose income and resources are insufficient to provide for the costs of health care or coverage.

(2) A child in foster care for whom public agencies are assuming financial responsibility, in whole or in part, or a person receiving aid under Chapter 2.1 (commencing with Section 16115) of Part 4.

(3) (A) A child who is eligible to receive Medi-Cal benefits pursuant to interstate agreements for adoption assistance and related services and benefits entered into under Chapter 2.6 (commencing with Section 16170) of Part 4, to the extent federal financial participation is available.

(B) Subparagraph (A) shall become inoperative on October 1, 2002.

(b) "Medically needy family person" means a parent or caretaker relative of a child who meets the deprivation requirements of Aid to Families with Dependent Children or a child under 21 years of age or a pregnant woman of any age with a confirmed pregnancy, exclusive of those persons specified in subdivision (a), whose income and resources are insufficient to provide for the costs of health care or coverage.

SEC. 8. Section 16121.2 is added to the Welfare and Institutions Code, to read:

16121.2. The Director of Social Services and the Director of Health Services may enter into interstate agreements pursuant to Chapter 2.6 (commencing with Section 16170) that provide for medical and other necessary services for special needs children, establish procedures for interstate delivery of adoption assistance and related services and benefits, and provide for the adoption of related regulations.

SEC. 9. Chapter 2.6 (commencing with Section 16170) is added to Part 4 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 2.6. INTERSTATE ADOPTION ASSISTANCE AGREEMENTS

16170. The Legislature finds and declares all of the following:

(a) Finding adoptive families for children, for whom state assistance is desirable pursuant to Chapter 2.1 (commencing with Section 16115), and assuring the protection of the interests of the children affected during the entire assistance period, require special measures when the adoptive parents move to other states or are residents of another state.

(b) Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states.

16171. The purposes of this chapter are to:

(a) Authorize the State Department of Social Services and the State Department of Health Services to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the State Department of Social Services.

(b) Provide procedures for interstate children's adoption assistance payments, including medical payments.

16172. As used in this chapter, the following definitions apply, unless the context clearly indicates otherwise:

(a) "Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(b) "Residence state" means the state where the child is living.

(c) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

16173. The State Department of Social Services and the State Department of Health Services are authorized to develop, participate in the development of, negotiate, or enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in this chapter. When entered into, and for so long as it shall remain in force, a compact shall have the force and effect of law.

16174. A compact entered into pursuant to the authority conferred by this chapter shall contain all of the following:

(a) A provision making it available for joinder by all states.

(b) A provision for withdrawal from the compact upon written notice to the parties, with a period of one year between the date of the notice and the effective date of the withdrawal.

(c) A requirement that the protections afforded by the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode.

(d) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state which undertakes to provide the adoption assistance, and further, that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents, and the state agency providing the adoption assistance.

(e) Any other provision as may be appropriate to implement the proper administration of the compact.

16175. A compact entered into pursuant to the authority conferred by this chapter may contain provisions in addition to those required pursuant to Section 16174, as follows:

(a) Provisions establishing procedures and entitlement to medical and other necessary social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs thereof.

(b) Any other provision as may be appropriate or incidental to the proper administration of the compact.

16176. (a) (1) Any child who is a resident of California and who is the subject of a state-only adoption assistance agreement with another state, shall be eligible to receive Medi-Cal benefits whether or not there is a cash benefit.

(2) Any child with special needs who is the subject of a state-only adoption assistance agreement with California shall continue to be eligible for Medi-Cal benefits if the child is placed out-of-state or with his or her adoptive family, moves out-of-state, and the receiving state does not provide Medicaid benefits to the child.

(b) The departments shall adopt regulations to implement the provisions of this chapter.

16177. Consistent with federal law, the State Department of Social Services and the State Department of Health Services, in connection with the administration of this chapter and any compact pursuant thereto, shall include in any state plan made pursuant to the Adoption Assistance and Child Welfare of 1980 (Public Law 96-272), Titles IV (e) and XIX of the Social Security Act, or any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all the cost. The departments shall apply for and administer all relevant federal aid in accordance with law.

SEC. 10. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided,

and that reasonable efforts to prevent out-of-home placement have been made. In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns. Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided. If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interest, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court

pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social service agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include documentation of the provisions specified in subdivisions (b), (c), and (d) of Section 16002.

(7) When out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) When out-of-home services are used, or when parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(9) When out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail.

(10) When out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency

or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan.

(13) When the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan

forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 11. (a) Section 2.1 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both this bill and AB 658. 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 366.3 of the Welfare and Institutions Code, and (3) AB 686 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 658, 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 366.3 of the Welfare and Institutions Code proposed by both this bill and AB 686. 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 366.3 of the Welfare Institutions Code, (3) AB 658 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 686, 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 366.3 of the Welfare and Institutions Code proposed by this bill, AB 658, and AB 686. 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 366.3 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 658 and AB 686, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

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.

CHAPTER 888

An act to amend Sections 977.2 and 1202.41 of, and to add Section 1202.46 to, the Penal Code, and to add Items 5240-103 and 5240-493

to Section 2.00 of the Budget Act of 1999, relating to corrections, and making an appropriation therefor.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 977.2 of the Penal Code is amended to read:

977.2. (a) Notwithstanding Section 977 or any other law, in all cases in which the defendant is charged with a misdemeanor or a felony and is currently incarcerated in the state prison, the Department of Corrections may arrange for the initial court appearance and arraignment in municipal or superior court to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. Nothing in this section shall be interpreted to eliminate the authority of the court to issue an order requiring the defendant to be physically present in the courtroom in those cases where the court finds circumstances that require the physical presence of the defendant in the courtroom.

(b) If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an initial hearing in superior court in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing.

(c) In lieu of the physical presence of the defendant's counsel at the institution with the defendant, the court and the department shall establish a confidential telephone and facsimile transmission line between the court and the institution for communication between the defendant's counsel in court and the defendant at the institution. In this case, counsel for the defendant shall not be required to be physically present at the institution during the initial court appearance and arraignment via electronic audiovideo communication. Nothing in this section shall be construed to prohibit the physical presence of the defense counsel with the defendant at the state prison.

SEC. 2. Section 1202.41 of the Penal Code is amended to read:

1202.41. (a) There is created within the State Board of Control a four-year pilot program for the purpose of collaborating with judges to amend restitution orders imposed pursuant to Section 1202.4 of this code and Section 730.6 of the Welfare and Institutions Code to the extent that the victim 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.

(b) The program shall commence 30 days after the effective date of this section and shall include restitution orders imposed by courts in the regional judicial assignments as determined by the Judicial Council, and Court Operation Services encompassing the Counties of Sacramento, San Diego, and Alameda. The State Board of Control, with the assistance of the Judicial Council, shall collaborate with judges in each of the three participating regional judicial assignments.

(c) (1) Notwithstanding Section 977 or any other law, in all cases in which the defendant is currently incarcerated in a state prison with two-way audiovideo communication capability, the Department of Corrections, at the request of the Board of Control, may arrange for a hearing to impose or amend a restitution order, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the defendant's physical presence in the courtroom, provided the county has agreed to make the necessary equipment available in the courtroom.

(2) Nothing in this subdivision shall be interpreted to eliminate the authority of the court to issue an order requiring the defendant to be physically present in the courtroom in those cases where the court finds circumstances that require the physical presence of the defendant in the courtroom.

(3) In lieu of the physical presence of the defendant's counsel at the institution with the defendant, the court and the Department of Corrections shall establish a confidential telephone and facsimile transmission line between the court and the institution for communication between the defendant's counsel in court and the defendant at the institution. In this case, counsel for the defendant shall not be required to be physically present at the institution during the hearing via electronic audiovideo communication. Nothing in this subdivision shall be construed to prohibit the physical presence of the defense counsel with the defendant at the state prison.

(d) If an inmate who is not incarcerated in a state prison with two-way audiovideo communication capability or ward does not waive his or her right to attend a restitution hearing for the amendment of a restitution order, the State Board of Control shall determine if the cost of holding the hearing is justified. If the State Board of Control determines that the cost of holding the hearing is not justified, the amendment of the restitution order affecting that inmate or ward shall not be pursued at that time.

(e) The State Board of Control shall prepare a preliminary report to the Legislature on the outcome of the pilot program no later than one year and 180 days after the effective date of the four-year pilot program. The board shall prepare a final report on the outcome of the pilot program no later than 2 years and 180 days after the conclusion of the four-year pilot program.

(f) Nothing in this section shall be construed to prohibit an individual or district attorney's office from independently pursuing the imposition or amendment of a restitution order that may result in a hearing, regardless of whether the victim 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.

SEC. 3. Section 1202.46 is added to the Penal Code, to read:

1202.46. Notwithstanding Section 1170, when the economic losses of a victim cannot be ascertained at the time of sentencing pursuant to subdivision (f) of Section 1202.4, the court shall retain jurisdiction over a person subject to a restitution order for purposes of imposing or modifying restitution until such time as the losses may be determined. Nothing in this section shall be construed as prohibiting a victim, the district attorney, or a court on its own motion from requesting correction, at any time, of a sentence when the sentence is invalid due to the omission of a restitution order or fine without a finding of compelling and extraordinary reasons pursuant to Section 1202.4.

SEC. 4. Item 5240-103-0001 is added to Section 2.00 of the Budget Act of 1999 (Chapter 50 of the Statutes of 1999), to read:

5240—103—0001—For local assistance, Department of Corrections 1,748,429

Schedule:

(a) 31 Community Correctional program 1,748,429

Provisions:

1. The funds appropriated by this item shall be allocated to the City of Coalinga to provide equity with regard to community correctional facility contract issues.

SEC. 5. Item 5240-493 is added to Section 2.00 of the Budget Act of 1999 (Chapter 50 of the Statutes of 1999), to read:

5240—493—Reappropriations, Department of Corrections. The balances of the appropriations provided in the following citations are reappropriated for the purposes, and subject to the limitations unless otherwise specified, provided for in the appropriations and shall be available for expenditure as cited below:

0001—General Fund

Item 5240—301—0001, Budget Act of 1998

(2.3) 61.04.045——California Correctional Institution, Tehachapi: New Potable Water Source——Working drawings and construction

(11) 61.08.020——California Institution for Men, Chino: PCE Contamination Cleanup——Construction

(12) 61.08.024——California Institution for Men, Chino: Replace Locking Devices——Working drawings and construction

(17) 61.09.427——California State Prison——Solano, Vacaville: Correctional Treatment Center, Phase II——Working drawings

(18) 61.10.051——California Men's Colony, San Luis Obispo: Central Kitchen Replacement——Working drawings

(27.1) 61.15.035——California Rehabilitation Center, Norco: Replace Men's Dormitories——Working drawings and construction

(41) 61.28.428——North Kern State Prison, Delano: Correctional Treatment Center, Phase II——Working drawings

0746——1986 Prison Construction Fund

Item 5240–303–0746, Budget Act of 1993

(1) 61.01.711——Statewide: Electrified Fence——Working drawings and construction, as reappropriated by Item 5240–491, Budget Act of 1996

CHAPTER 889

An act to add Section 11518 to the Food and Agricultural Code, relating to pesticides.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 11518 is added to the Food and Agricultural Code, to read:

11518. A commissioner accepting payment for pest control registrations or services by credit card or other payment device may impose a charge for costs incurred in connection with that form of payment and shall use his or her best efforts to minimize those costs.

The terms "credit card" and "payment device" have the same meaning as defined in Section 6161 of the Government Code.

CHAPTER 890

An act to amend Section 2282 of, to amend, repeal, and add Section 224 to, to add Section 2287 to, and to add and repeal Sections 2282 and 2282.5 of, the Food and Agricultural Code, relating to agriculture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 224 of the Food and Agricultural Code is amended to read:

224. Money transferred by the Controller to the Department of Food and Agriculture Fund from the Motor Vehicle Fuel Account pursuant to Section 8352.5 of the Revenue and Taxation Code shall be expended by the Secretary of Food and Agriculture as follows:

(a) Five hundred thousand dollars ($500,000) of the amount transferred each fiscal year is hereby appropriated for reimbursement for charges for state administrative costs, and for departmental and divisional overhead expense apportioned to the Department of Food and Agriculture Fund.

(b) One million dollars ($1,000,000) each fiscal year is hereby appropriated to be used only for emergency detection, eradication, or research of agricultural plant or animal pests or diseases, during the fiscal year. The Secretary of Food and Agriculture may expend the funds with the approval of the Director of Finance. At the end of each fiscal year, any unencumbered balance of those funds shall be added to the amount available for payment to counties during the next fiscal year, as provided in subdivision (c).

(c) The total amount transferred during each fiscal year less the amounts provided in subdivisions (a) and (b), is hereby appropriated to be paid to the counties as follows:

(1) First priority shall be partial reimbursement of any county's prior year net general fund county cost for carrying out agricultural programs authorized by this code that are supervised by the department.

(2) Second priority shall be up to full reimbursement within the same fiscal period plus 60 days for expenditures incurred by the county in accordance with a budget approved by the department for programs dealing with high-risk pest exclusion and noxious weeds.

(3) Reimbursements shall not exceed the total amount transferred by the Controller to the Department of Food and

Agriculture Fund from the Motor Vehicle Fuel Account pursuant to Section 8352.5 of the Revenue and Taxation Code, and shall be apportioned to the counties by the secretary in relation to each county's expenditures to the total amount expended by all counties for the preceding fiscal year for such agricultural programs, as determined by the secretary. The amount to be transferred to any county for a fiscal year may be increased or decreased by the secretary to provide that, insofar as those transferred unclaimed refundable gas tax funds for apportionment to the counties are available, no county shall receive smaller combined apportionments of gas taxes and unclaimed refundable gas taxes than that county would have received had the gas taxes been apportioned without the transfer required by Section 8352.5, as determined by the secretary, except that the amount of unclaimed refundable gas tax funds to be transferred to any county for a fiscal year may be increased or decreased by the secretary to compensate for incorrect previous transfers to that county.

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

SEC. 2. Section 224 is added to the Food and Agricultural Code, to read:

224. Money transferred by the Controller to the Department of Food and Agriculture Fund from the Motor Vehicle Fuel Account pursuant to Section 8352.5 of the Revenue and Taxation Code shall be expended by the Secretary of Food and Agriculture as follows:

(a) Five hundred thousand dollars ($500,000) of the amount transferred each fiscal year is hereby appropriated for reimbursement for charges for state administrative costs, and for departmental and divisional overhead expense apportioned to the Department of Food and Agriculture Fund.

(b) One million dollars ($1,000,000) each fiscal year is hereby appropriated to be used only for emergency detection, eradication, or research of agricultural plant or animal pests or diseases, during the fiscal year. The Secretary of Food and Agriculture may expend the funds with the approval of the Director of Finance. At the end of each fiscal year, any unencumbered balance of those funds shall be added to the amount available for payment to counties during the next fiscal year, as provided in subdivision (c).

(c) The total amount transferred during each fiscal year less the amounts provided in subdivisions (a) and (b), is hereby appropriated to be paid to the counties as partial reimbursement for county expenses for carrying out agricultural programs authorized by this code that are supervised by the department. The payment shall be apportioned to the counties by the secretary in relation to each county's expenditures to the total amount expended by all counties for the preceding fiscal year for such agricultural programs, as determined by the secretary. The amount to be transferred to any

county for a fiscal year may be increased or decreased by the secretary to provide that, insofar as those transferred unclaimed refundable gas tax funds for apportionment to the counties are available, no county shall receive smaller combined apportionments of gas taxes and unclaimed refundable gas taxes than that county would have received had the gas taxes been apportioned without the transfer required by Section 8352.5, as determined by the secretary, except that the amount of unclaimed refundable gas tax funds to be transferred to any county for a fiscal year may be increased or decreased by the secretary to compensate for incorrect previous transfers to that county.

(d) This section shall become operative on July 1, 2001.

SEC. 3. Section 2282 is added to the Food and Agricultural Code, to read:

2282. (a) Except as provided in Section 2282.5, the Secretary of Food and Agriculture or the Director of Pesticide Regulation may allocate annually to each county an amount determined by the secretary or the director not to exceed one-third of the amount expended by the county during the previous fiscal year for the programs of joint responsibility. The allocations apply to and shall be made from funds appropriated to the secretary or the director for purposes of carrying out activities of joint responsibility with the commissioners at the local levels.

(b) The annual report to the Legislature described in Section 2281 shall include findings for each of the following joint programs, including the amounts allocated to, and expended by, the counties in the previous fiscal year and the proposed amount to be allocated by the secretary for each program for the ensuing budget year:

(1) Pest detection.
(2) Pest eradication.
(3) Pest management control.
(4) Pest exclusion.
(5) Seed inspection.
(6) Nursery inspection.
(7) Fruit and vegetable quality control.
(8) Egg quality control.
(9) Apiary inspection.
(10) Crop statistics.

The report also shall specify the programs that have been augmented with state funds each year since 1980 because of new legislative mandates, or because of pest infestations or outbreaks occurring since that date, and the annual amounts of those augmentations.

(c) This section shall become inoperative on 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. 4. Section 2282 of the Food and Agricultural Code, as amended by Section 5 of Chapter 870 of the Statutes of 1998, is amended to read:

2282. (a) The Secretary of Food and Agriculture or the Director of Pesticide Regulation may allocate annually to each county an amount determined by the secretary or the director not to exceed one-third of the amount expended by the county during the previous fiscal year for the programs of joint responsibility under the jurisdiction of the secretary or director, as applicable. The allocations shall be made from funds appropriated to the secretary or the director for purposes of carrying out activities of joint responsibility with the commissioners at the local levels.

(b) The annual report to the Legislature required by Section 2281 shall include findings for each of the following joint programs, including the amounts allocated to, and expended by, the counties in the previous fiscal year and the proposed amount to be allocated by the secretary for each program for the ensuing budget year:

(1) Pest detection.
(2) Pest eradication.
(3) Pest management control.
(4) Pest exclusion.
(5) Seed inspection.
(6) Nursery inspection.
(7) Fruit and vegetable quality control.
(8) Egg quality control.
(9) Apiary inspection.
(10) Crop statistics.

The report shall also specify the programs that have been augmented with state funds each year since 1980 because of new legislative mandates, or because of pest infestations or outbreaks occurring since that date, and the annual amounts of those augmentations.

(c) This section shall become operative July 1, 2000.

SEC. 5. Section 2282.5 is added to the Food and Agricultural Code, to read:

2282.5. (a) The development of work plans for allocation of the funding appropriated in the Budget Act to the department for local assistance for agricultural plant and animal pest and disease prevention shall be the responsibility of the department. The department shall establish criteria for the development of the work plans and for allocating the appropriated funds.

(b) Of the amount appropriated in the Budget Act to the department for local assistance for agricultural plant and animal pest and disease prevention, five million five hundred thousand dollars ($5,500,000) shall be utilized solely for high-risk pest exclusion activities. The work plans for the exclusion of high-risk pests shall be developed by the department with the county agricultural commissioners and in consultation with affected industry

representatives. In order to determine the effectiveness of high-risk pest exclusion programs in each county, the criteria established by the department for the work plan shall include, but need not be limited to, the following:

(1) The number of high-risk plant shipments entering each county.

(2) The number of high-risk entry points in each county.

(3) The number of state action quarantine pests intercepted or detected annually in each county.

(4) The work hours expended by each county in conducting exclusion of high-risk pests.

(5) The rate of interceptions and rejections per inspection activity.

(c) To remain eligible for funding under this section, a county shall maintain its support of ongoing operational costs of the county agricultural commissioner programs listed in subdivision (b) of Section 2282, at 1997–98 fiscal year levels.

(d) Funds allocated for high-risk pest exclusion activities pursuant to subdivision (b) may not be expended for any purpose other than the exclusion or detection of high-risk pests consistent with the work plans prescribed in subdivision (a) or scientific evaluation. Funds allocated by each county on or after September 28, 1998, shall not be allocated to other programs listed in subdivision (b) of Section 2282 until the county work plan is approved by the department consistent with the funding appropriated in the Budget Act of 1999 to the department for local assistance for agricultural plant and animal pest and disease prevention for this purpose.

(e) This section shall become inoperative on July 1, 2000, and as of January 1, 2001, is repealed, unless a later enacted statute that is enacted before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 2287 is added to the Food and Agricultural Code, to read:

2287. Whenever the commissioner determines that it is necessary to more effectively or more efficiently carry out a program listed in subdivision (b) of Section 2282, the commissioner may enter into a mutual aid agreement with other counties for the purpose of sharing staff, equipment, expertise, information, and other resources necessary to meet the needs of the program.

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 make changes to certain provisions affecting agriculture prior to their repeal, thereby protecting public health and safety, it is necessary that this act take effect immediately.

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CHAPTER 891

An act to amend Sections 68547, 68806, 69894, 69894.1, 69899.5, 70217, 72608, 72635, 72708.5, 73433, 73433.1, 73434, 73435, 73436, 73436.1, 73436.2, and 73665 of, to amend and renumber Section 75758 of, to add Sections 70140.5, 70214.5, 70214.6, and 72190.5 to, to repeal and add Sections 73399 and 73757 of, and to repeal Section 73433.4 of, and Article 17 (commencing with Section 74000) of Chapter 10 of Title 8 of, the Government Code, and to amend Section 830.36 of the Penal Code, relating to court services.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 68547 of the Government Code, as amended by Section 245.4 of Chapter 931 of the Statutes of 1998, is amended to read:

68547. (a) For the purposes of this article, a judge is deemed to serve or sit under assignment on each day during which it is necessary for him or her on account of the assignment to serve in a substantial way on the court to which assigned, to travel to or from such court, or to be absent from his or her residence. If a judge so serves under assignment in one or more courts during all days other than Saturdays, Sundays, and holidays in any period of 30 or more consecutive days (inclusive of Saturdays, Sundays, and holidays), he or she shall be deemed also to have served or sat in such court or courts on all Saturdays, Sundays, and holidays during or immediately preceding that period.

(b) A judge of a municipal court is deemed to have served under assignment in the superior court on any day when both of the following applies:

(1) A cross-assignment issued by the Chief Justice is in effect and the judge's workload is assigned pursuant to a judicial and administrative coordination plan approved by the Judicial Council pursuant to procedures set forth in rules of court and consistent with Section 68112.

(2) The Judicial Council has certified that cases in the court's jurisdiction are assigned pursuant to a uniform countywide or regional system for assignment of cases among superior and municipal courts which maximizes the utilization of all judicial officers in that county or region.

(c) The Judicial Council shall adopt rules as necessary to implement this section, including criteria for approval of judicial and administrative coordination plans.

(d) If a judge who serves his or her court on a part-time basis has completed the business of the home court for all days affected by any

assignment, compensation attributable to the home court shall only be deducted from the amounts to be paid pursuant to Section 68540.7 for the days the judge is serving on assignment to the extent necessary to limit the assigned judge's total judicial compensation for the month to the amount earned by a regular judge of the court to which the judge is assigned.

(e) This section shall be repealed on January 1, 2001, unless a later enacted statute enacted before that date extends or deletes that date.

SEC. 1.2. Section 68547 of the Government Code, as amended by Section 245.5 of Chapter 931 of the Statutes of 1998, is amended to read:

68547. (a) For the purposes of this article, a judge or justice is deemed to serve or sit under assignment on each day during which it is necessary for him or her on account of the assignment to serve in a substantial way on the court to which assigned, to travel to or from such court, or to be absent from his or her residence. If a judge so serves under assignment in one or more courts during all days other than Saturdays, Sundays, and holidays in any period of 30 or more consecutive days (inclusive of Saturdays, Sundays, and holidays), he or she shall be deemed also to have served or sat in such court or courts on all Saturdays, Sundays, and holidays during or immediately preceding that period.

If a judge who serves his or her court on a part-time basis has completed the business of the home court for all days affected by any assignment, compensation attributable to the home court shall only be deducted from the amounts to be paid pursuant to Section 68540.7 for the days the judge is serving on assignment to the extent necessary to limit the assigned judge's total judicial compensation for the month to the amount earned by a regular judge of the court to which the judge is assigned.

(b) This section shall become operative on January 1, 2001.

SEC. 2. Section 68806 of the Government Code is amended to read:

68806. The Supreme Court may appoint and employ during its pleasure such phonographic reporters, assistants, secretaries, librarians, marshals, and other employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon it and its members. The marshals shall have the powers of a peace officer in all parts of this state, as defined in Section 830.36 of the Penal Code. Except as in this chapter otherwise provided, the Supreme Court shall determine the duties and fix and pay the compensation of all those officers and employees.

SEC. 3. Section 69894 of the Government Code is amended to read:

69894. In the County of Los Angeles, a majority of the judges of the superior court may appoint the following officers and employees:

Number	Title
6	Accountant, SC
1	Accounting Officer II, SC
6	Accounting Technician
2	Administrative Assistant I
4	Administrative Assistant II
3	Administrative Assistant III
19	Administrative Judicial Secretary
13	Administrative Secretary
3	Administrator I, SC
3	Administrator II, SC
2	Administrator III, SC
1	Arbitration/Judicial Assignment Administrator, SC
38	Assistant Division/District Chief, SC
1	Assistant Head, Office Services
1	Chief Attorney, Planning and Research, SC
1	Chief Clerk
1	Chief, Office and Special Support Services, SC
23	Child Custody Evaluator
2	Computer Equipment Operator, SC
66	Court Commissioner
22	Court Exhibits Custodian
3	Court Facilities and Property Services Coordinator
351	Court Reporter
59	Court Services Liaison, SC
10	Courtroom Assistant, SC
1	Criminal Courts Coordinator
19	Data Conversion Equipment Operator
1	Data Conversion Supervisor I, SC
1	Data Processing Contracts Administrator, SC
3	Data Processing Manager, SC
3	Deputy Executive Officer, SC
1	Director, Capital Projects/Facilities Management, SC
3	Director, SC
16	District Jury Coordinator
5	Division Chief, Family Court Services, SC
1	Division Chief, Mental Health Services, SC
14	EDP Programmer Analyst I, SC

7	EDP Programmer Analyst II, SC
13	EDP Senior Programmer Analyst, SC
18	EDP Supervising Programmer Analyst, SC
36	Electronic Recording Monitor
1	Executive Officer/Clerk of the Superior Court
1	Family Law Attorney, SC
1	Family Law Facilitator, SC
1	Finance Officer, Mandatory Expense, SC
8	Financial Evaluator, SC
1	Graphic Artist, SC
2	Head, Staffing Services
1	Intermediate Accountant, SC
3	Interpreter/Court Reporter Assignment Clerk
10	Investigator
297	Judicial Assistant
16	Judicial Assistant Trainee
2	Judicial Secretary
25	Juvenile Traffic Hearing Officer
6	Law Clerk
1	Law Librarian, SC
1	Legal Research Assistant
1	Light Vehicle Driver
1	Manager I, SC
23	Manager II, SC
4	Manager III, SC
11	Mental Health Hearing Referee
393	Office Assistant I
165	Office Assistant II
393	Office Assistant III
38	Office Assistant IV
4	Office Assistant Trainee
3	Office Systems Technician I, SC
3	Office Systems Technician II, SC
19	Paralegal, SC
7	Payroll Technician, SC
4	Personnel Assistant
4	Personnel Technician
1	Principal Counselor
7	Principal Program Analyst
2	Printer I, SC

1	Printer II, SC
1	Printing Production Supervisor, SC
12	Probate Attorney I, SC
1	Probate Attorney II, SC
11	Probate Decree Clerk
1	Procurement Assistant
6	Procurement Assistant II, SC
11	Program Analyst
15	Program Specialist
9	Property Custodian Auditor
1	Public Information Officer, SC
6	Records Assistant
38	Referee
100	Research Attorney
6	Secretary I
36	Secretary II
2	Secretary to the Deputy Executive Officer, SC
1	Secretary to Grand Jury
2	Secretary to Presiding Judge
1	Secretary to the Assistant Presiding Judge, SC
1	Secretary to the Executive Officer/Clerk of the Superior Court
1	Senior Accountant, SC
2	Senior Administrative Secretary, SC
12	Senior Counselor
4	Senior Court Services Liaison, SC
6	Senior Departmental Personnel Technician
10	Senior Electronic Recording Monitor, SC
1	Senior Employee Relations Representative, SC
44	Senior Family Mediator
53	Senior Judicial Assistant, SC
16	Senior Judicial Secretary
31	Senior Office Assistant I
9	Senior Office Assistant II
8	Senior Personnel Assistant
6	Senior Program Analyst
3	Senior Property Custodian–Auditor
2	Senior Word Processor
1	Special Assistant
1	Special Assistant, Appellate Department, SC

18	Staff Assistant II
2	Stenographic Clerk, Family Law Court
50	Student Professional Worker, SC
30	Student Worker, SC
113	Superior Court Clerk
1	Supervising Computer Operator, SC
3	Supervising Court Exhibits Custodian I
1	Supervising Court Exhibits Custodian II
11	Supervising District Office Clerk
1	Supervising Paralegal, SC
1	Supervising Probate Attorney, SC
1	Supervising Probate Decree Clerk
2	Supervising Research Attorney
1	Supervisor, Computer Support Services, SC
2	Supervisor, Records Section, SC
1	Training Officer, SC
5	Warehouse Worker I, SC
1	Warehouse Worker II, SC
5	Warehouse Worker Aide, M.C., NCS

All personnel appointed pursuant to this article shall serve at the pleasure of the court and may at any time be removed by the court in its discretion.

SEC. 4. Section 69894.1 of the Government Code, as amended by Section 1.5 of Chapter 973 of the Statutes of 1998, is amended to read:

69894.1. (a) Officers and employees of the superior court shall receive a monthly salary at a rate specified in the Los Angeles County Code, as follows:

Title	Schedule
Accountant, SC	73B
Accounting Officer II, SC	79J
Accounting Technician	58D
Administrative Assistant I	62B N2
Administrative Assistant II	71K
Administrative Assistant III	75F
Administrative Judicial Secretary	74J N3
Administrative Secretary	73J
Administrator I, SC	R11 N23
Administrator II, SC	R12 N23
Administrator III, SC	R13 N23
Arbitration/Judicial Assignment Administrator, SC	86J

Assistant Director, Management Systems, SC	R10 N23
Assistant Division/District Chief, SC	84J
Assistant Head, Office Services	69G
Chief Attorney, Planning and Research, SC	100C NW
Chief Clerk	71E
Chief, Management Studies, SC	91L
Chief, Office and Special Support Services, SC	80J
Child Custody Evaluator	86C
Computer Equipment Operator, SC	56E
Computer System Operator, SC	62J
Court Commissioner	F $7,606.79
Court Exhibits Custodian	63D
Court Facilities and Property Services Coordinator	76K
Court Reporter	86B NZ
Court Services Liaison, SC	61H
Courtroom Assistant, SC	63H
Criminal Courts Coordinator	R10 N23
Data Conversion Equipment Operator	58G
Data Conversion Supervisor I, SC	62F
Data Processing Contracts Administrator, SC	85E
Data Processing Manager, SC	90G
Deputy Executive Officer, SC	R15 N23
Director, Capital Projects/Facilities Management, SC	R12 N23
Director, SC	R14 N23
District Jury Coordinator	61A
Division Chief, Family Court Services, SC	R9 N23
Division Chief, Mental Health Services, SC	R9 N23
EDP Programmer Analyst I, SC	76L N2
EDP Programmer Analyst II, SC	78L N2
EDP Senior Programmer Analyst, SC	83K
EDP Supervising Programmer Analyst, SC	87C
Electronic Recording Monitor	61H
Employee Relations Representative, SC	84J
Executive Officer/Clerk of the Superior Court	R18 N23
Family Law Attorney, SC	90E NX
Family Law Facilitator, SC	92E NX
Finance Officer, Mandatory Expense, SC	88H
Financial Evaluator, SC	62G
Graphic Artist, SC	67C

Head, Staffing Services	83L
Intermediate Accountant, SC	79E
Interpreter	60E
Interpreter/Court Reporter Assignment Clerk	73A
Investigator	76B NX
Judicial Administration Specialist, SC	79K N3
Judicial Assistant	72B NX
Judicial Assistant Trainee	F $2,505.00
Judicial Secretary	67J N3
Jury Program Coordinator	79L
Juvenile Traffic Hearing Officer	86G
Law Clerk	71K N5
Law Librarian, SC	79L
Legal Research Assistant	61D
Light Vehicle Driver	50C
Manager I, SC	R9 N23
Manager II, SC	R10 N23
Manager III, SC	R11 N23
Mental Health Hearing Referee	86C
Office Assistant I	53A
Office Assistant II	57A
Office Assistant III	59A
Office Assistant IV	61A
Office Assistant Trainee	49A
Office Systems Technician I, SC	69E
Office Systems Technician II, SC	76E
Paralegal, SC	68G NW
Payroll Records Supervisor	68F
Payroll Technician, SC	63F
Personnel Assistant	59E
Personnel Technician	75L
Principal Counselor	85A
Principal Program Analyst	85L
Printer I, SC	58K
Printer II, SC	63H N2
Printing Production Supervisor, SC	72A
Probate Attorney I, SC	99C
Probate Attorney II, SC	101A
Probate Decree Clerk	59G
Procurement Assistant	60B

Procurement Assistant II, SC	66A
Program Analyst	75L
Program Specialist	70D
Property Custodian Auditor	59A
Public Information Officer, SC	R10 N23
Records Assistant	59D
Referee	FD $349.74
Research Attorney	77K N4
Secretary I	62G
Secretary II	69J
Secretary to Deputy Executive Officer, SC	77J
Secretary to Grand Jury	77H
Secretary to Presiding Judge	85J
Secretary to the Assistant Presiding Judge, SC	79J
Secretary to the Executive Officer/Clerk of the Superior Court	83J
Senior Accountant, SC	85E
Senior Administrative Secretary, SC	75J
Senior Counselor	82A
Senior Court Services Liaison, SC	68F
Senior Departmental Personnel Technician	79L
Senior Electronic Recording Monitor, SC	68F
Senior Employee Relations Representative, SC	90K
Senior Family Mediator	86C
Senior Judicial Assistant, SC	80K
Senior Judicial Secretary	70J N3
Senior Office Assistant I	63A
Senior Office Assistant II	66J
Senior Personnel Assistant	69B
Senior Probate Decree Clerk	65F
Senior Program Analyst	79L
Senior Property Custodian–Auditor	64L
Senior Word Processor	61G
Special Assistant	R8 N23
Special Assistant, Appellate Department, SC	80J
Staff Assistant I	63A
Staff Assistant II	70A
Staff Attorney, Planning and Research, SC	91C NW
Stenographic Clerk, Family Law Court	71G
Student Professional Worker, SC	FH $8.80

Student Worker, SC	FH $7.28
Superior Court Clerk	72B NX
Supervising Computer Operator, SC	69E
Supervising Court Exhibits Custodian I	66C
Supervising Court Exhibits Custodian II	72F
Supervising District Office Clerk	70B
Supervising Paralegal, SC	74G NX
Supervising Probate Attorney, SC	102D
Supervising Probate Decree Clerk	76D
Supervising Research Attorney	79K
Supervisor, Computer Support Services, SC	74H
Supervisor, Records Section, SC	69E
Training Officer, SC	83L
Warehouse Worker I, SC	58B
Warehouse Worker II, SC	62B
Warehouse Worker Aide, M.C., NCS	56B

Whenever a reference to numbered salary schedules and notes is made in this section, those found in the Los Angeles County Code, Title 6, shall apply. Whenever the compensation of superior court judges is adjusted, the flat rate salaries for court commissioners and referees shall be adjusted to maintain the salary relationship of 85 percent of the annual compensation of superior court judges.

As defined in the Los Angeles County Code, Section 6.28.030, the following prefixes are used instead of schedule numbers:

F—Flat rate per month

FD—Flat rate per day

FH—Flat rate per hour

As defined in the Los Angeles County Code Section 6.28.040, the following abbreviation is used in conjunction with or instead of schedule or range numbers:

N—Note (refers to Notes at end of Section 6.28.050)

"R" or "A" indicates a position's inclusion in the County's Management Appraisal and Performance Plan. The grade number following the "R" or "A" designation indicates the salary range. Compensation of these positions is in accordance with Sections 6.08.300 to 6.08.380, inclusive, of the county code.

(b) This section shall become operative on January 1, 2000, and shall remain in effect only until July 1, 2000, and as of that date is repealed.

SEC. 5. Section 69894.1 of the Government Code, as amended by Section 1.6 of Chapter 973 of the Statutes of 1998, is amended to read:

69894.1. (a) Officers and employees of the superior court shall receive a monthly salary at a rate specified in the Los Angeles County Code as follows:

Title	Schedule
Accountant, SC	73K
Accounting Officer II, SC	80F
Accounting Technician	59A
Administrative Assistant I	62K N2
Administrative Assistant II	72G
Administrative Assistant III	76C
Administrative Judicial Secretary	75F N3
Administrative Secretary	74F
Administrator I, SC	R11 N23
Administrator II, SC	R12 N23
Administrator III, SC	R13 N23
Arbitration/Judicial Assignment Administrator, SC	87F
Assistant Director, Management Systems, SC	R10 N23
Assistant Division/District Chief, SC	85F
Assistant Head, Office Services	70D
Chief Attorney, Planning and Research, SC	100L NW
Chief Clerk	72B
Chief, Management Systems, SC	92H
Chief, Office and Special Support Services, SC	81F
Child Custody Evaluator	86L
Computer Equipment Operator, SC	57B
Computer System Operator, SC	63F
Court Commissioner	F $7,606.79
Court Exhibits Custodian	63D
Court Facilities and Property Services Coordinator	77G
Court Reporter	86K NZ
Court Services Liaison, SC	61H
Courtroom Assistant, SC	63H
Criminal Courts Coordinator	R10 N23
Data Conversion Equipment Operator	58G
Data Conversion Supervisor I, SC	63C
Data Processing Contracts Administrator, SC	86B
Data Processing Manager, SC	91D
Deputy Executive Officer, SC	R15 N23
Director, Capital Projects/Facilities Management, SC	R12 N23
Director, SC	R14 N23
District Jury Coordinator	61A
Division Chief, Family Court Services, SC	R9 N23

Division Chief, Mental Health Services, SC	R9 N23
EDP Programmer Analyst I, SC	77H N2
EDP Programmer Analyst II, SC	79H N2
EDP Senior Programmer Analyst, SC	84G
EDP Supervising Programmer Analyst, SC	87L
Electronic Recording Monitor	61H
Employee Relations Representative, SC	85F
Executive Officer/Clerk of the Superior Court	R18 N23
Family Law Attorney, SC	91B NX
Family Law Facilitator, SC	93B NX
Finance Officer, Mandatory Expense, SC	89E
Financial Evaluator, SC	62G
Graphic Artist, SC	67L
Head, Staffing Services	84H
Intermediate Accountant, SC	80B
Interpreter	61B
Interpreter/Court Reporter Assignment Clerk	73A
Investigator	76K NX
Judicial Administration Specialist, SC	80G
Judicial Assistant	72K NX
Judicial Assistant Trainee	F $2,505.00
Judicial Secretary	68F N3
Jury Program Coordinator	80H
Juvenile Traffic Hearing Officer	87D
Law Clerk	72G N5
Law Librarian, SC	80H
Legal Research Assistant	62A
Light Vehicle Driver	50C
Manager I, SC	R9 N23
Manager II, SC	R10 N23
Manager III, SC	R11 N23
Mental Health Hearing Referee	86L
Office Assistant I	53A
Office Assistant II	57A
Office Assistant III	59A
Office Assistant IV	61A
Office Assistant Trainee	49A
Office Systems Technician I, SC	70B
Office Systems Technician II, SC	77B
Paralegal, SC	69D NW
Payroll Records Supervisor	69C
Payroll Technician, SC	63F

Personnel Assistant	60B
Personnel Technician	76H
Principal Counselor	85J
Principal Program Analyst	86H
Printer I, SC	58K
Printer II, SC	63H N2
Printing Production Supervisor, SC	72J
Probate Attorney I, SC	99L
Probate Attorney II, SC	101J
Probate Decree Clerk	59G
Procurement Assistant	60B
Procurement Assistant II, SC	66J
Program Analyst	76H
Program Specialist	71A
Property Custodian Auditor	59A
Public Information Officer, SC	R10 N23
Records Assistant	59D
Referee	FD $349.74
Research Attorney	78G N4
Secretary I	62G
Secretary II	70F
Secretary to Deputy Executive Officer, SC	78F
Secretary to Grand Jury	78E
Secretary to Presiding Judge	86F
Secretary to the Assistant Presiding Judge, SC	80F
Secretary to the Executive Officer/Clerk of the Superior Court	84F
Senior Accountant, SC	86B
Senior Administrative Secretary, SC	76F
Senior Counselor	82J
Senior Court Services Liaison, SC	69C
Senior Departmental Personnel Technician	80H
Senior Electronic Recording Monitor, SC	69C
Senior Employee Relations Representative, SC	91G
Senior Family Mediator	86L
Senior Judicial Assistant, SC	81G
Senior Judicial Secretary	71F N3
Senior Office Assistant I	63J
Senior Office Assistant II	67F
Senior Personnel Assistant	69K
Senior Probate Decree Clerk	66C
Senior Program Analyst	80H

Senior Property Custodian–Auditor	65H
Senior Word Processor	61G
Special Assistant	R8 N23
Special Assistant, Appellate Department, SC	81F
Staff Assistant I	63J
Staff Assistant II	70J
Staff Attorney, Planning and Research, SC	91L NW
Stenographic Clerk, Family Law Court	71G
Student Professional Worker, SC	FH $8.80
Student Worker, SC	FH $7.28
Superior Court Clerk	72K NX
Supervising Computer Operator, SC	70B
Supervising Court Exhibits Custodian I	66L
Supervising Court Exhibits Custodian II	73C
Supervising District Office Clerk	70K
Supervising Paralegal, SC	75D NX
Supervising Probate Attorney, SC	103A
Supervising Probate Decree Clerk	77A
Supervising Research Attorney	80G
Supervisor, Computer Support Services, SC	75E
Supervisor, Records Section, SC	70B
Training Officer, SC	84H
Warehouse Worker I, SC	58B
Warehouse Worker II, SC	62B
Warehouse Worker Aide, M.C., NCS	56B

Whenever a reference to numbered salary schedules and notes is made in this section, those found in the Los Angeles County Code, Title 6, shall apply. Whenever the compensation of superior court judges is adjusted, the flat rate salaries for court commissioners and referees shall be adjusted to maintain the salary relationship of 85 percent of the annual compensation of superior court judges.

As defined in the Los Angeles County Code, Section 6.28.030, the following prefixes are used instead of schedule numbers:

F—Flat rate per month.

FD—Flat rate per day.

FH—Flat rate per hour.

As defined in the Los Angeles County Code, Section 6.28.040, the following abbreviation is used in conjunction with or instead of schedule or range numbers:

N—Note (refers to Notes at end of Section 6.28.050).

"R" or "A" indicates a position's inclusion in the County's Management Appraisal and Performance Plan. The grade number following the "R" or "A" designation indicates the salary range.

Compensation of these positions is in accordance with Sections 6.08.300 to 6.08.380, inclusive, of the county code.

(b) This section shall become operative on July 1, 2000, and shall remain in effect until January 1, 2001, and as of that date is repealed.

SEC. 6. Section 69894.1 of the Government Code, as amended by Section 1.7 of Chapter 973 of the Statutes of 1998, is amended to read:

69894.1. (a) Officers and employees of the superior court shall receive a monthly salary at a rate specified in the Los Angeles County Code as follows:

Title	Schedule
Accountant, SC	74G
Accounting Officer II, SC	81C
Accounting Technician	59J
Administrative Assistant I	63G N2
Administrative Assistant II	73D
Administrative Assistant III	76L
Administrative Judicial Secretary	76C N3
Administrative Secretary	75C
Administrator I, SC	R11 N23
Administrator II, SC	R12 N23
Administrator III, SC	R13 N23
Arbitration/Judicial Assignment Administrator, SC	88C
Assistant Director, Management Systems, SC	R10 N23
Assistant Division/District Chief, SC	86C
Assistant Head, Office Services	71A
Chief Attorney, Planning and Research, SC	101H NW
Chief Clerk	72K
Chief, Management Systems, SC	93E
Chief, Office and Special Support Services, SC	82C
Child Custody Evaluator	87H
Computer Equipment Operator, SC	57K
Computer System Operator, SC	64C
Court Commissioner	F $7,606.79
Court Exhibits Custodian	63D
Court Facilities and Property Services Coordinator	78D
Court Reporter	87G NZ
Court Services Liaison, SC	61H
Courtroom Assistant, SC	63H
Criminal Courts Coordinator	R10 N23
Data Conversion Equipment Operator	58G

Data Conversion Supervisor I, SC	63L
Data Processing Contracts Administrator, SC	86K
Data Processing Manager, SC	92A
Deputy Executive Officer, SC	R15 N23
Director, Capital Projects/Facilities Management, SC	R12 N23
Director, SC	R14 N23
District Jury Coordinator	61A
Division Chief, Family Court Services, SC	R9 N23
Division Chief, Mental Health Services, SC	R9 N23
EDP Programmer Analyst I, SC	78E N2
EDP Programmer Analyst II, SC	80E N2
EDP Senior Programmer Analyst, SC	85D
EDP Supervising Programmer Analyst, SC	88H
Electronic Recording Monitor	61H
Employee Relations Representative, SC	86C
Executive Officer/Clerk of the Superior Court	R18 N23
Family Law Attorney, SC	91K NX
Family Law Facilitator, SC	93K NX
Finance Officer, Mandatory Expense, SC	90B
Financial Evaluator, SC	62G
Graphic Artist, SC	68H
Head, Staffing Services	85E
Intermediate Accountant, SC	80K
Interpreter	61K
Interpreter/Court Reporter Assignment Clerk	73A
Investigator	77G NX
Judicial Administration Specialist, SC	81D N3
Judicial Assistant	73G NX
Judicial Assistant Trainee	F $2,505.00
Judicial Secretary	69C N3
Jury Program Coordinator	81E
Juvenile Traffic Hearing Officer	88A
Law Clerk	73D N5
Law Librarian, SC	81E
Legal Research Assistant	62J
Light Vehicle Driver	50C
Manager I, SC	R9 N23
Manager II, SC	R10 N23
Manager III, SC	R11 N23
Mental Health Hearing Referee	87H
Office Assistant I	53A

Office Assistant II	57A
Office Assistant III	59A
Office Assistant IV	61A
Office Assistant Trainee	49A
Office Systems Technician I, SC	70K
Office Systems Technician II, SC	77K
Paralegal, SC	70A NW
Payroll Records Supervisor	69L
Payroll Technician, SC	63F
Personnel Assistant	60K
Personnel Technician	77E
Principal Counselor	86F
Principal Program Analyst	87E
Printer I, SC	58K
Printer II, SC	63H N2
Printing Production Supervisor, SC	73F
Probate Attorney I, SC	100H
Probate Attorney II, SC	102F
Probate Decree Clerk	59G
Procurement Assistant	60B
Procurement Assistant II, SC	67F
Program Analyst	77E
Program Specialist	71J
Property Custodian Auditor	59A
Public Information Officer, SC	R10 N23
Records Assistant	59D
Referee	FD $349.74
Research Attorney	79D N4
Secretary I	62G
Secretary II	71C
Secretary to Deputy Executive Officer, SC	79C
Secretary to Grand Jury	79B
Secretary to Presiding Judge	87C
Secretary to the Assistant Presiding Judge, SC	81C
Secretary to the Executive Officer/Clerk of the Superior Court	85C
Senior Accountant, SC	86K
Senior Administrative Secretary, SC	77C
Senior Counselor	83F
Senior Court Services Liaison, SC	69L
Senior Departmental Personnel Technician	81E
Senior Electronic Recording Monitor, SC	69L

Senior Employee Relations Representative, SC	92D
Senior Family Mediator	87H
Senior Judicial Assistant, SC	82D
Senior Judicial Secretary	72C N3
Senior Office Assistant I	64F
Senior Office Assistant II	68C
Senior Personnel Assistant	70G
Senior Probate Decree Clerk	66L
Senior Program Analyst	81E
Senior Property Custodian–Auditor	66E
Senior Word Processor	61G
Special Assistant	R8 N23
Special Assistant, Appellate Department, SC	82C
Staff Assistant I	64F
Staff Assistant II	71F
Staff Attorney, Planning and Research, SC	92H NW
Stenographic Clerk, Family Law Court	71G
Student Professional Worker, SC	FH $8.80
Student Worker, SC	FH $7.28
Superior Court Clerk	73G NX
Supervising Computer Operator, SC	70K
Supervising Court Exhibits Custodian I	67H
Supervising Court Exhibits Custodian II	73L
Supervising District Office Clerk	71G
Supervising Paralegal, SC	76A NX
Supervising Probate Attorney, SC	103J
Supervising Probate Decree Clerk	77J
Supervising Research Attorney	81D
Supervisor, Computer Support Services, SC	76B
Supervisor, Records Section, SC	70K
Training Officer, SC	85E
Warehouse Worker I, SC	58B
Warehouse Worker II, SC	62B
Warehouse Worker Aide, M.C., NCS	56B

Whenever a reference to numbered salary schedules and notes is made in this section, those found in the Los Angeles County Code, Title 6, shall apply. Whenever the compensation of superior court judges is adjusted, the flat rate salaries for court commissioners and referees shall be adjusted to maintain the salary relationship of 85 percent of the annual compensation of superior court judges.

As defined in the Los Angeles County Code, Section 6.28.030, the following prefixes are used instead of schedule numbers:

F—Flat rate per month.
FD—Flat rate per day.
FH—Flat rate per hour.

As defined in the Los Angeles County Code, Section 6.28.040, the following abbreviation is used in conjunction with or instead of schedule or range numbers:

N—Note (refers to Notes at end of Section 6.28.050).

"R" or "A" indicates a position's inclusion in the County's Management Appraisal and Performance Plan. The grade number following the "R" or "A" designation indicates the salary range. Compensation of these positions is in accordance with Sections 6.08.300 to 6.08.380, inclusive, of the county code.

(b) This section shall become operative on January 1, 2001.

SEC. 7. Section 69899.5 of the Government Code is amended to read:

69899.5. In the County of Orange, a majority of the judges of the superior court may appoint or delegate authority to the Superior Court Chief Executive Officer to appoint officers and employees whose salaries shall be pursuant to the Table of Classifications and Salary Schedules adopted by the Executive Committee of the Superior Court.

Pursuant to the Lockyer-Isenberg Trial Court Funding Act of 1997 and Article 3 (commencing with Section 77200) of Chapter 13, the County of Orange has no obligation for the salary and benefits of commissioners referees, officers, assistants, and other employees of the superior court appointed pursuant to this section. Funding for trial court operations shall be solely the responsibility of the state.

All personnel appointed pursuant to this section shall serve at the pleasure of the majority of the judges and may at any time be removed by the majority of the judges in their discretion, or in the discretion of the Superior Court Chief Executive Officer when so delegated.

The superior court may establish any additional positions, titles, and pay rates as are required, and may appoint and employ any additional commissioners, referees, officers, assistants, and other employees it deems necessary for the performance of the duties and exercise of the powers conferred by law upon the court and its members. Rates of compensation of all officers, assistants, and other employees authorized by this section, except those of court commissioners and juvenile court referees, may be adjusted by a majority of the judges of the court, the Superior Court Executive Committee, or the Superior Court Chief Executive Officer when so delegated.

All court personnel shall be entitled to any step advancement, vacation, sick leave, holiday benefits, other leaves of absence, lump-sum payments for sick leave and vacation when separated from the service, inclusion in the retirement system of the County of Orange and other benefits as may be adopted in a memorandum of

understanding with a recognized employee organization or as may be directed by rules adopted by a majority of the judges.

Superior court commissioners and juvenile court referees shall be entitled to any benefits as may be directed by rules adopted by the majority of the judges.

Where statutes require implementation by local ordinances for the extension of benefits to local officers and employees, these benefits may be made applicable, by rule, to those employees.

Rules of the court may include other matters pertaining to the general administration of the court, including conditions of employment of personnel. When the rules are adopted by a majority of the judges and filed with the Judicial Council they shall have the same status as other rules of court adopted pursuant to Section 68070.

When requested to do so by the court, the county shall furnish to the superior court any services as may be required in connection with the recruitment and employment of personnel.

All those personnel and judges shall be allowed actual traveling and necessary expenses incurred while engaged in the duties of their employment or office.

This section is not intended to alter the existing employment status of, or meet and confer obligations related to, superior court staff or to require changes in local employment practices.

SEC. 8. Section 70140.5 is added to the Government Code, to read:

70140.5. All trial court commissioner and referee positions in the superior courts that were funded and filled as of January 1, 1999, and that are not authorized under any other section of the Government Code are hereby authorized under this section. This section is not intended to replace, modify, or otherwise alter the terms, conditions, or qualifications of any existing section pertaining to the appointment of trial court commissioners and referees.

SEC. 9. Section 70214.5 is added to the Government Code, to read:

70214.5. Subject to certification by the court to the Administrative Office of the Courts that the court is able to absorb the differential salary costs within the court's existing budget, the Contra Costa County Superior Court may convert and reclassify four existing referee positions to four additional court commissioner positions.

SEC. 10. Section 70214.6 is added to the Government Code, to read:

70214.6. Subject to certification by the court to the Administrative Office of the Courts that the court is able to absorb the differential salary cost within the court's existing budget, the Santa Barbara County Superior Court may convert and reclassify one existing traffic referee position to one additional court commissioner position.

SEC. 10.5. Section 70217 of the Government Code is amended to read:

70217. On unification of the municipal and superior courts in a county, until adoption of a statewide structure for trial court employees, officers, and other personnel by the Legislature:

(a) Notwithstanding any other provision of law contained in this title, upon unification, previously selected officers, employees, and other personnel who serve the courts shall become the officers, employees, and other personnel of the unified superior court at their existing or equivalent classifications, and with their existing salaries, economic and noneconomic benefits and other existing terms and conditions of employment that include, but are not limited to, accrued and unused vacation, sick leave, personal leave, health and pension plans, civil service or merit system coverage, and other systems that provide similar employment protections. The status, position, and rights of such persons shall not be affected by the unification and shall be retained by them as officers, employees, and other personnel of the unified superior court. This provision shall be retroactive to the date of unification and shall supersede any other provision of law governing at-will employment or exemption from civil service coverage applicable to these employees. It is the intent of the Legislature to ensure that officers, employees, and other personnel of the superior court do not lose employment protections to which they were entitled when unification took effect as a result of unification.

(b) Permanent employees of the municipal and superior courts on the effective date of unification shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees on the effective date of unification shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(c) Employment seniority of an employee of the municipal or superior courts on the effective date of unification shall be counted toward seniority in the unified superior court, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(d) No officer or employee with peace officer status shall lose that status as a result of unification, and any officer or employee authorized to perform notice and process services or court security services in the municipal court is authorized to perform those services in the unified superior court.

SEC. 11. Section 72190.5 is added to the Government Code, to read:

72190.5. All trial court commissioner and referee positions in the municipal courts that were funded and filled as of January 1, 1999, and that are not authorized under any other section of the Government Code are hereby authorized under this section. This section is not

intended to replace, modify, or otherwise alter the terms, conditions, or qualifications of any existing section pertaining to the appointment of trial court commissioners and referees.

SEC. 12. Section 72608 of the Government Code is amended to read:

72608. Certain classes of positions prescribed in Article 1.5 (commencing with Section 72620), Article 1.6 (commencing with Section 72630), Article 2 (commencing with Section 72640), Article 3 (commencing with Section 72700), and Article 4 (commencing with Section 72750) are deemed to be related in job and compensation to position classifications included in the Los Angeles County Code, and in the case of certain classes of positions, to the administrative series included in Section 69894.1. In order to maintain the relationship of compensation and employee rights and benefits between officers and attachés of municipal courts and county or superior court employees having commensurate duties and responsibilities and to provide appropriate salary adjustments and employee rights and benefits for related classes of court positions, this section shall govern salary adjustments and employee rights and benefits for officers and attachés of municipal courts in Los Angeles County.

On the effective date of any amendment to the Los Angeles County Code adjusting the salary of a county employee classification listed in the table of positions set forth in this section, or on the effective date of a resolution or ordinance by the board of supervisors approving interim salary adjustments for superior court classes pursuant to Section 69894.2, the salary of the related municipal court position listed opposite thereto shall be adjusted an equivalent number of schedules or steps in a schedule in the salary schedule to which that position is attached. If the level of compensation established by any salary adjustment is not reflected in the salary schedule number provided for any court classification, the adjustment shall apply to each position in the classification on the effective date of the act fixing the salary schedule number. Classes of positions in the Management Appraisal and Performance Plan shall be compensated and adjusted in accordance with provisions approved by the board of supervisors.

Likewise, the salary of any court classification being enumerated in Article 1.5 (commencing with Section 72620), Article 1.6 (commencing with Section 72630), Article 2 (commencing with Section 72640), Article 3 (commencing with Section 72700), or Article 4 (commencing with Section 72750) for the first time as an amendment to this chapter shall be adjusted as necessary on the effective date of that amendment to provide the same relationship to the county classification to which it is attached as that established when the court classification was approved in accordance with Section 72607.

Table of Positions

Municipal Court Class	County or Superior Court Class
Officer Series	
Marshal	Commander
Assistant Marshal	Commander
Commander, Marshal	Commander
Captain, Marshal	Captain
Lieutenant, Marshal	Lieutenant
Sergeant, Marshal	Sergeant
Deputy Marshal IV	Deputy Sheriff IV
Deputy Marshal	Deputy Sheriff
Deputy Marshal Trainee	Deputy Sheriff Trainee
Deputy Marshal, Matron	Custody Assistant
Deputy Clerk, Custody Officer	Custody Assistant
Legal Services Specialist, Marshal	Safety Police Officer II
Security Officer I, Marshal	Safety Police Officer I
Security Officer II, Marshal	Safety Police Officer I
Municipal Courts Planning and Research	
Chief Staff Attorney, P & R	Senior Deputy County Counsel
Assistant Chief Staff Attorney, P & R	Senior Deputy County Counsel
Staff Attorney III, P & R	Senior Deputy County Counsel
Staff Attorney II, P & R	Senior Deputy County Counsel
Staff Attorney I, P & R	Senior Deputy County Counsel
Legal Research Assistant, P & R	Senior Deputy County Counsel
Planning Analyst, P & R	Program Specialist I, CAO
Planning Analyst Aide, P & R	Administrative Staff Trainee, CAO
Principal Budget Analyst, P & R	Program Specialist I, CAO
Head, Management Services, P & R, NCS	Program Specialist I, CAO
Senior Planning Analyst, P & R	Program Specialist I, CAO

Courtroom Series

All positions subject to civil service provisions enumerated in Articles 2, 3, and 4 which are not listed in this table.	Superior Court Clerk
Court Clerk, M.C.	Judicial Assistant (Salary adjustments and insurance benefits only) Intermediate Typist-Clerk (All other benefits)
Municipal Court Clerk Trainee	Administrative Aide
Municipal Court Judicial Assistant, NCS	Judicial Assistant (Salary adjustments and insurance benefits only) Intermediate Typist-Clerk (All other benefits)
Municipal Court Judicial Assistant Trainee, NCS	Administrative Aide (Salary adjustments and insurance benefits only) Intermediate Typist-Clerk (All other benefits)

Management Series

Court Administrator, LAMC	Management Appraisal and Performance Plan
Assistant Court Administrator, LAMC, NCS	Management Appraisal and Performance Plan
Deputy Court Administrator, Admin. and Financial Service, LAMC, NCS	Management Appraisal and Performance Plan
Deputy Court Administrator, Operations, LAMC, NCS	Management Appraisal and Performance Plan
Division Chief, Operations, LAMC	Program Specialist I, CAO
Division Chief, Operations, NCS, LAMC	Program Specialist I, CAO
Personnel Administrator, NCS, M.C.	Program Specialist I, CAO
Senior Programming & System Analyst, M.C.	EDP Principal Programmer Analyst

Senior Programming & System Analyst, M.C., NCS	EDP Principal Programmer Analyst
Managing Court Reporter, NCS, LAMC	Court Reporter (Salary adjustment only) Program Specialist I, CAO (All other benefits)
Capital Projects Manager, M.C., NCS	Program Specialist I, CAO
Assistant Capital Projects Manager, NCS, LAMC	Program Specialist I, CAO
Court Information Officer, M.C., NCS	Public Information Officer I
Chief, Systems Division, NCS, M.C.	Data Systems Coordinator
Assistant Chief, Systems Division, M.C., NCS	Data Systems Coordinator
Senior Court Manager, M.C., NCS	Program Specialist I, CAO
Assistant Division Chief Operations	Program Specialist I, CAO
Assistant Division Chief Operations, NCS, LAMC	Program Specialist I, CAO
Court Manager, M.C., NCS	Program Specialist I, CAO
Administrative Services Manager, M.C., NCS	Program Specialist I, CAO
Court Administrator (except Los Angeles Judicial District)	Structure adjustment to the nearest one-quarter of one percent approved by the board of supervisors for application to the ranges established for classes assigned to the Management Appraisal and Performance Plan
Assistant Chief Deputy, Clerk, M.C.	Program Specialist I, CAO
Assistant Court Administrator (1 judge court)	Court Administrator (1 judge court)
Assistant Court Administrator (2 judge court)	Court Administrator (2 judge court)
Assistant Court Administrator (3, 4, 5 judge court)	Court Administrator (3, 4, 5 judge court)
Assistant Court Administrator (3, 4, 5 judge court) NCS	Court Administrator (3, 4, 5 judge court)

Assistant Court Administrator (6 judge court)	Court Administrator (6 judge court)
Assistant Court Administrator (7 judge court)	Court Administrator (7 judge court)
Assistant Court Administrator (8 judge court)	Court Administrator (8 judge court)
Assistant Court Administrator (9 judge court)	Court Administrator (9 judge court)
Assistant Court Administrator (9 judge court), NCS	Court Administrator (9 judge court)
Assistant Court Administrator (10, 11, 12 judge court)	Court Administrator (10, 11, 12 judge court)
Judicial Management Intern, M.C., NCS	Administrative Aide
Division Chief, Long Beach M.C.	Program Specialist I, CAO
Principal Clerk, Los Angeles	Judicial Assistant (Salary adjustment) Program Specialist I, CAO (All other benefits)
Principal Clerk, M.C., NCS	Judicial Assistant (Salary adjustment only) Program Specialist I, CAO (All other benefits)
Training Officer, NCS, M.C.	Program Specialist I, CAO
Chief Deputy Clerk, M.C., NCS	Program Specialist I, CAO
Division Chief, NCS, M.C.	Program Specialist I, CAO
Executive Officer, Administratively Consolidated Municipal Courts, NCS	Court Administrator (10, 11, 12 judge court)
District Court Administrator (1 judge court), NCS	Court Administrator (1 judge court)
District Court Administrator (3, 4, 5 judge court), NCS	Court Administrator (3, 4, 5 judge court)
District Court Administrator (9 judge court), NCS	Court Administrator (9 judge court)

Personnel–Administrative Services–Accounting Series

Head, Fiscal & Administrative Services, Marshal	Program Specialist I, CAO

Head Personnel Technician, M.C., NCS	Head Departmental Personnel Technician
Head Personnel Technician, Marshal	Head Departmental Personnel Technician
Personnel Technician, M.C.	Senior Departmental Personnel Technician
Personnel Technician, M.C., NCS	Senior Departmental Personnel Technician
Personnel Technician, Marshal	Senior Departmental Personnel Technician
Personnel Assistant, M.C.	Departmental Personnel Assistant
Personnel Assistant, M.C., NCS	Departmental Personnel Assistant
Personnel Assistant, Marshal	Departmental Personnel Assistant
Safety Officer, Marshal	Safety Officer
Senior Personnel Assistant, M.C.	Senior Departmental Personnel Assistant
Senior Personnel Assistant, Marshal	Senior Departmental Personnel Assistant
Senior Personnel Assistant, M.C., NCS	Senior Departmental Personnel Assistant
Senior Staff Assistant, Marshal	Program Specialist I, CAO
Staff Assistant, Marshal	Program Specialist I, CAO
Principal Clerk, Marshal	Program Specialist I, CAO
Assistant Head, Fiscal & Administrative Services, Marshal	Program Specialist I, CAO
Executive Assistant, Presiding Judges Association	Program Specialist I, CAO
Principal Administrative Assistant, M.C.	Administrative Assistant III
Principal Administrative Assistant, M.C., NCS	Administrative Assistant III
Principal Assistant, Fiscal Services, Marshal	Program Specialist I, CAO
Principal Personnel Assistant, M.C.	Principal Departmental Personnel Assistant
Principal Personnel Assistant, M.C., NCS	Principal Departmental Personnel Assistant
Supervising Accountant, M.C., NCS	Senior Accountant Auditor

Senior Administrative Assistant, M.C.	Administrative Assistant II
Senior Administrative Assistant, M.C., NCS	Administrative Assistant II
Administrative Assistant, M.C.	Administrative Assistant I
Administrative Assistant, M.C., NCS	Administrative Assistant I
Staff Assistant, M.C.	Staff Assistant I
Staff Assistant, M.C., NCS	Staff Assistant I
Statistical Analyst, M.C., NCS	Statistical Analyst
Accountant, M.C.	Accountant II
Accountant, M.C., NCS	Accountant II
Accounting Technician, M.C.	Accounting Technician I
Accounting Technician, M.C., NCS	Accounting Technician I
Intermediate Accountant, M.C.	Intermediate Accountant Auditor
Intermediate Accountant, M.C., NCS	Intermediate Accountant Auditor
Senior Accountant, M.C.	Intermediate Accountant Auditor
Senior Accountant, M.C., NCS	Intermediate Accountant Auditor
Facilities Services Assistant, M.C.	Facilities Services Assistant
Facilities Services Assistant, M.C., NCS	Facilities Services Assistant
Facilities Planning Assistant, M.C.	Facilities Planning Assistant
Facilities Planning Assistant, M.C., NCS	Facilities Planning Assistant
Staff Development Specialist, Muni Ct	Staff Development Specialist I, D.A.
Staff Development Specialist, M.C., NCS	Staff Development Specialist I, D.A.
Account Clerk, M.C.	Account Clerk II
Financial Evaluator, M.C., NCS	Financial Evaluator
Financial Evaluator Assistant, M.C., NCS	Financial Evaluator Assistant
Personnel Clerk, M.C.	Senior Typist-Clerk
Personnel Clerk, M.C., NCS	Senior Typist-Clerk
Management Services Specialist, M.C., NCS	Program Specialist I, CAO

Secretarial and Stenographic Series

Secretary to Presiding Judge, M.C.	Executive Secretary II
Secretary to Presiding Judge, M.C., NCS	Executive Secretary II
Executive Secretary, M.C.	Executive Secretary II
Executive Secretary, M.C., NCS	Executive Secretary II
Senior Management Secretary, LAMC	Executive Secretary II
Senior Management Secretary, M.C., NCS	Executive Secretary II
Management Secretary, M.C.	Executive Secretary II
Management Secretary, M.C., NCS	Executive Secretary II
Management Secretary II, M.C., NCS	Senior Management Secretary II
Executive Secretary, Marshal	Executive Secretary II
Senior Secretary II, Muni Ct	Senior Secretary II
Senior Secretary II, M.C., NCS	Senior Secretary II
Management Secretary, Marshal	Senior Secretary II
Senior Judicial Secretary, Muni Ct	Senior Secretary II
Senior Judicial Secretary, M.C., NCS	Senior Secretary II
Senior Secretary III, Muni Ct	Senior Secretary II
Senior Secretary III, M.C., NCS	Senior Secretary II
Senior Secretary I, Muni Ct	Senior Secretary II
Senior Secretary I, M.C., NCS	Senior Secretary II
Secretary, Marshal	Senior Secretary II
Secretary, Muni Ct	Senior Secretary II
Secretary, M.C., NCS	Senior Secretary II
Senior Secretary, Marshal	Senior Secretary II
Stenographer, M.C.	Legal Office Support Assistant II
Stenographer, M.C., NCS	Legal Office Support Assistant II

Clerical Series

Deputy Municipal Court Clerk I	Intermediate Typist-Clerk
Deputy Municipal Court Clerk I, NCS	Intermediate Typist-Clerk
Deputy Clerk II, Marshal	Intermediate Typist-Clerk
Deputy Clerk I, Marshal	Intermediate Typist-Clerk
Deputy Municipal Court Clerk II	Intermediate Typist-Clerk
Deputy Municipal Court Clerk II, NCS	Intermediate Typist-Clerk
Deputy Clerk III, M.C.	Intermediate Typist-Clerk
Deputy Clerk III, M.C., NCS	Intermediate Typist-Clerk
Deputy Clerk III, Marshal	Intermediate Typist-Clerk
Administrative Clerk, Marshal	Intermediate Typist-Clerk
Clerical Aide, Municipal Court	Intermediate Typist-Clerk
Clerical Aide, M.C., NCS	Intermediate Typist-Clerk
Office Services Assistant I, M.C., NCS	Intermediate Typist-Clerk
Office Services Assistant II, M.C., NCS	Intermediate Typist-Clerk
Office Services Assistant III, M.C., NCS	Intermediate Typist-Clerk
Senior Payroll Clerk, Marshal	Payroll Clerk I
Supervising Payroll Clerk, Marshal	Supervising Payroll Clerk I
Payroll Clerk, Marshal	Assistant Payroll Clerk II
Assistant Payroll Technician, M.C., NCS	Payroll Clerk I
Payroll Technician, M.C., NCS	Payroll Clerk II
Supervising Payroll Technician, M.C., NCS	Supervising Payroll Clerk II
Marshal's Dispatcher I	Communication Operator II, Sheriff
Marshal's Dispatcher II	Communication Operator II, Sheriff
Supervising Deputy Clerk I, M.C.	Supervising Typist-Clerk
Supervising Deputy Clerk I, M.C., NCS	Supervising Typist-Clerk

Supervising Deputy Clerk II, M.C.	Superior Court Clerk
Supervising Deputy Clerk II, M.C., NCS	Superior Court Clerk
Deputy Clerk Supervisor, M.C., NCS	Supervising Typist-Clerk
Senior Courtroom Clerk, M.C., NCS	Senior Judicial Assistant

Supply, Duplicating, and Miscellaneous Series

Supply and Reproduction Supervisor, Marshal	Warehouse Worker II
Supply and Reproduction Assistant, Marshal	Warehouse Worker II
Warehouse Worker Aide, M.C., NCS	Warehouse Worker Aide
Procurement Assistant I, M.C., NCS	Procurement Assistant I
Procurement Assistant II, M.C.	Procurement Assistant II
Procurement Assistant II, M.C., NCS	Procurement Assistant II
Procurement Aide, M.C.	Procurement Aide
Procurement Aide, M.C., NCS	Procurement Aide
Light Vehicle Driver, Marshal	Communications Messenger Driver
Light Vehicle Driver, M.C., NCS	Communications Messenger Driver
General Maintenance Supervisor, M.C.	General Maintenance Supervisor
General Maintenance Supervisor, M.C., NCS	General Maintenance Supervisor
General Maintenance Worker, M.C.	General Maintenance Worker
General Maintenance Worker, M.C., NCS	General Maintenance Worker
Senior General Maintenance Worker, M.C., NCS	Senior General Maintenance Worker
Student Professional Worker, M.C., NCS	Student Professional Worker
Student Worker, M.C., NCS	Student Worker
Deputy Municipal Court Clerk Aide, NCS	Student Worker

Warehouse Worker I, Marshal	Warehouse Worker I
Warehouse Worker I, M.C., NCS	Warehouse Worker I
Warehouse Worker II, M.C.	Warehouse Worker II
Warehouse Worker II, M.C., NCS	Warehouse Worker II
Warehouse Manager, M.C.	Warehouse Manager
Warehouse Manager, M.C., NCS	Warehouse Manager
Graphic Artist, M.C.	Graphic Artist
Graphic Artist, M.C., NCS	Graphic Artist
Custodian, M.C., NCS	Custodian
Supervising Law Clerk	Supervising Research Attorney
Supervising Law Clerk, M.C., NCS	Supervising Research Attorney
Law Clerk, M.C.	Research Attorney
Interpreter	Interpreter (SC)
Interpreter, M.C., NCS	Interpreter (SC)

Management Information and Data Processing Series

Data Systems Coordinator, M.C.	Data Systems Coordinator
Data Systems Coordinator, M.C., NCS	Data Systems Coordinator
Data Systems Analyst Aide, M.C., NCS	Data Systems Analyst Aide
Data Systems Analyst I, M.C.	Data Systems Analyst I
Data Systems Analyst I, M.C., NCS	Data Systems Analyst I
Data Systems Analyst II, M.C.	Data Systems Analyst II
Data Systems Analyst II, M.C., NCS	Data Systems Analyst II
Data Conversion Supervisor I, M.C.	Data Conversion Supervisor I
Data Conversion Supervisor I, M.C., NCS	Data Conversion Supervisor I
Data Conversion Supervisor III, M.C.	Data Conversion Supervisor III
Data Conversion Supervisor III, M.C., NCS	Data Conversion Supervisor III
EDP Staff Aide, M.C.	Systems Aide
EDP Staff Aide, M.C., NCS	Systems Aide

EDP Support Analyst II, M.C., NCS	EDP Support Analyst II
Supervising Computer Operator, M.C.	Supervising Computer Operator
Supervising Computer Operator, M.C., NCS	Supervising Computer Operator
Computer Operations Supervisor, M.C.	Supervising Computer Operator
Computer Operations Supervisor, M.C., NCS	Supervising Computer Operator
Computer Equipment Operator, M.C.	Computer Equipment Operator
Computer System Operator, M.C.	Computer Systems Operator
Senior Data Control Clerk, M.C.	Senior Data Control Clerk
Data Control Clerk, M.C.	Data Control Clerk
Senior Data Conversion Equipment Operator, M.C.	Senior Data Conversion Equipment Operator
Data Conversion Equipment Operator I, M.C.	Data Conversion Equipment Operator I
Principal Programmer Analyst, M.C.	EDP Principal Programmer Analyst
Principal Programmer Analyst, M.C., NCS	EDP Principal Programmer Analyst
Senior Programmer Analyst, M.C.	EDP Programmer Analyst II
Senior Programmer Analyst, M.C., NCS	EDP Programmer Analyst II
Systems Programmer, M.C.	EDP Systems Programmer
Systems Programmer, M.C., NCS	EDP Systems Programmer
Telecommunications Technician, M.C.	Computer Systems Operator
Telecommunications Technician, M.C., NCS	Computer Systems Operator
Senior Telecommunications Systems Engineer, M.C., NCS	Senior Telecommunications Systems Engineer
Data Processing Specialist I, M.C., NCS	Data Processing Specialist I

Systems Aide, M.C., NCS	Systems Aide
Senior Systems Aide, M.C., NCS	Senior Systems Aide

All classes of positions approved by a majority of the judges of the municipal court and the board of supervisors for inclusion in the Los Angeles County Management Appraisal and Performance (MAP) Plan will be compensated in accordance with this plan as set forth in Part 3, Chapter 6.08, of the Los Angeles County Code. All of these provisions are applicable to participants in the marshal's department, except that for the marshal, the appointing authority is the municipal court judges of Los Angeles County, and for all other participants in the marshal's department, the appointing authority is the marshal. For purposes of MAP Plan administration only, the appointing authority for the court administrator, Los Angeles Judicial District, is the court's executive board. The court administrator is the appointing authority for all other participants in the Los Angeles Judicial District.

The presiding judge, the immediate past presiding judge (if still a member of the Los Angeles Municipal Court) and the assistant presiding judge will confer with the court administrator to establish new performance goals and evaluate the completion of previously established goals; these judges will then rate the court administrator's performance using the MAP Plan rating categories established in the county code. The presiding judge shall present this rating to the executive board for ratification at its October meeting. In the event the executive board does not act upon the rating, that rating will stand. In the event a rating is not completed, the court administrator's rating is deemed to be "merit performance." Adjustments to the court administrator's salary will be in accordance with Part 3, Chapter 6.08, of the Los Angeles County Code.

Any existing special pay provision applicable to court classes included in MAP Plan and which is expressed in terms of additional schedules of compensation will be converted to a percentage basis in accordance with the county's plan which equates each schedule with 2.75 percent.

Salary adjustments made pursuant to this section shall be on an interim basis and shall expire 90 days after the adjournment of the next regular session of the Legislature unless ratified at such session.

Officers and attachés of municipal courts in Los Angeles County shall be entitled to all employee rights, programs and benefits, including, but not limited to, paid medical plans, management incentive, management appraisal and performance plan, deferred compensation plans, flexible benefit plans, and early separation programs, parking and cafeteria privileges, longevity pay, shooting allowance, uniform and equipment allowance, and the same rights to meet with those entities which prescribe their compensation, that are provided for or made applicable to the related Los Angeles

County and superior court employee classification. Participation in management incentive early separation programs and management appraisal and performance plan shall be established by joint action and approval of a majority of the board of supervisors and a majority of the judges of the court, except in the Los Angeles Judicial District where joint action shall be approved by a majority of the board of supervisors and a majority of the court's executive board.

Bonus Level I assignments of deputy marshals are as follows:
Nineteen positions—assistant commander, small division.
Twelve positions—court supervisor.
Nine positions—field supervisor.
Nine positions—office supervisor.
Three positions—communications and fleet management supervisor.
One position—training officer.
One position—real estate levy/bookkeeping section supervisor.
Bonus Level II assignments of deputy marshals are as follows:
One position—security liaison and investigations.

Deputy marshals with Bonus Level I assignments shall receive additional compensation in the same amounts, for the same periods, and paid on the same terms, as deputy sheriffs assigned to Bonus Level I positions. Deputy marshals with Bonus Level II assignments shall receive additional compensation in the same amounts, for the same periods, and paid on the same terms, as deputy sheriffs assigned to Bonus Level II positions.

In addition to the salary adjustment otherwise provided by this section, persons employed in the classifications of executive secretary, M.C., senior management secretary, M.C., and secretary to the presiding judge shall receive a one-time only two-schedule salary increase effective January 1, 1989. The resulting salary rate shall constitute the base rates for subsequent salary adjustments.

In addition to the salary provided by the applicable management appraisal and performance plan provisions, a 16.5 percent bonus shall be paid to no more than one position of deputy court administrator in the Los Angeles Municipal Court who is admitted to practice law before all courts in California and required to render legal opinions and provide legal advice to the court administrator and judges.

Any deputy municipal court clerk I, deputy municipal court clerk I, NCS, deputy municipal court clerk II, deputy municipal court clerk II, NCS, deputy clerk III, M.C., deputy clerk III, M.C., NCS, deputy clerk IV, M.C., municipal court judicial assistant, NCS, or court clerk, M.C. who, in addition to a regular courtroom assignment, is required to operate and monitor electronic recording equipment to produce the official record of the court proceedings shall receive a two-schedule increase in compensation while so engaged. Effective January 3, 1989, any deputy clerk IV, M.C., municipal court judicial

assistant, NCS, or court clerk, M.C. assigned to a courtroom, who in addition to his or her regular duties, is required to operate and monitor electronic recording equipment to produce a record of court proceedings shall receive an increase of eight standard salary levels while so engaged. However, in no event shall a person who is receiving additional compensation for performing duties involving greater skill and responsibility as described in subdivision (b) of Section 72705 or subdivision (k), (*l*), or (m) of Section 72755 be eligible to receive additional compensation pursuant to this subdivision, except for a deputy clerk III, M.C. or deputy clerk III, M.C., NCS assigned to the regular duties of a deputy clerk IV, M.C. or court clerk, M.C. as provided in subdivision (j) of Section 72755.

SEC. 13. Section 72635 of the Government Code is amended to read:

72635. The executive committee of the presiding judges association of the municipal courts of Los Angeles County may appoint two senior planning analysts, planning and research.

SEC. 14. Section 72708.5 of the Government Code is amended to read:

72708.5. The judges of the court may appoint as many interpreters, not exceeding two, and as many law clerks, not exceeding 14, as the business of the court may require. Two of the law clerks may be appointed supervising law clerks. Employees appointed pursuant to this section shall hold office at the pleasure of the judges and shall receive compensation as provided in Section 72609. They shall be members of any retirement system which includes attachés of the court.

SEC. 15. Section 73399 of the Government Code is repealed.

SEC. 16. Section 73399 is added to the Government Code, to read:

73399. (a) The Court Executive Officer/Jury Commissioner may appoint the following positions for both superior and municipal courts in Kings County:

(1) One Assistant Court Executive Officer who shall have a salary range of 107.0.

(2) One Research Attorney who shall have a salary range of 99.5.

(3) One Director of Operations who shall have a salary range of 95.5.

(4) One Court Financial Officer who shall have a salary range of 89.0.

(5) One Court Program Manager who shall have a salary range of 87.0.

(6) One Court Services Coordinator who shall have a salary range of 87.0.

(7) One Court Interpreter Coordinator who shall have a salary range of 83.0.

(8) One Court Administrator Assistant who shall have a salary range of 63.5.

(9) Nine Court Service Clerks III who shall have a salary range of 58.5.

(10) Thirteen Courtroom Clerks who shall have a salary range of 58.0.

(11) One Court Janitorial Supervisor who shall have a salary range of 56.5.

(12) Ten Court Service Clerks II who shall have a salary range of 52.0.

(13) One Account Clerk III who shall have a salary range of 52.0

(14) One Court Custodial Janitor who shall have a salary range of 49.0.

(15) Fourteen Court Service Clerks I who shall have a salary range of 47.0.

(16) One Office Assistant III who shall have a salary range of 43.5.

SEC. 17. Section 73433 of the Government Code is amended to read:

73433. There shall be one clerk-administrator in each municipal court who shall be appointed by and serve at the pleasure of a majority of the judges of the court to which the clerk-administrator is appointed. In a court with less than three judges, the presiding judge shall appoint the clerk-administrator of the court. The clerk-administrator of the East Kern Municipal Court shall receive the biweekly salary specified in range 56.7 of the salary schedule. The clerk-administrator of the North Kern Municipal Court shall receive the biweekly salary specified in range 56.7 of the salary schedule. The clerk-administrator of the South Kern Municipal Court shall receive the biweekly salary specified in range 56.7 of the salary schedule. The clerk-administrator of the Bakersfield Municipal Court shall receive the biweekly salary specified in range 63.0 of the salary schedule.

SEC. 18. Section 73433.1 of the Government Code is amended to read:

73433.1. There shall be one assistant clerk-administrator in the Bakersfield Municipal Court who shall be appointed by and serve at the pleasure of the majority of the judges of the court. The assistant clerk-administrator shall receive the biweekly salary specified in range 56.7 of the salary schedule.

SEC. 19. Section 73433.4 of the Government Code is repealed.

SEC. 20. Section 73434 of the Government Code is amended to read:

73434. There shall be two judicial secretaries in the Bakersfield Municipal Court who shall be appointed by and serve at the pleasure of a majority of the judges of the court. The judicial secretaries shall receive a biweekly salary specified in range 47.3 of the salary schedule.

SEC. 21. Section 73435 of the Government Code is amended to read:

73435. The clerk-administrator of the Bakersfield Municipal Court may appoint:

(a) Three chief deputy municipal court clerks who shall act as the supervisors of the civil, criminal, and traffic divisions of the court and each of whom shall receive the biweekly salary specified in range 51.0 of the salary schedule.

(b) Seven senior deputy municipal court clerks, each of whom shall receive the biweekly salary specified in range 48.9 of the salary schedule.

(c) One supervising courtroom clerk, who shall supervise the deputy municipal courtroom clerks and who shall receive the biweekly salary specified in range 52.0 of the salary schedule.

(d) One senior courtroom clerk who shall receive the biweekly salary specified in range 51.0 of the salary schedule.

(e) Eighteen deputy municipal courtroom clerks II or deputy municipal courtroom clerks I, each of whom shall receive the biweekly salary specified in ranges 48.8 and 45.2, respectively, of the salary schedule.

Deputy municipal courtroom clerk I shall be the entrance position to deputy municipal courtroom clerk II. The clerk-administrator, with the concurrence of the presiding judge, may advance any deputy municipal courtroom clerk I to the position of deputy municipal courtroom clerk II without further examination, if the deputy municipal courtroom clerk I has served for six months and otherwise meets the qualifications for deputy municipal courtroom clerk II and if the presiding judge is satisfied with the deputy municipal courtroom clerk I's performance during the six-month period.

(f) Fifty-two full-time deputy municipal court clerks II or I, each of whom shall receive the biweekly salary specified in ranges 45.1 and 42.8, respectively, of the salary schedule.

Deputy municipal court clerk I shall be the entrance position to the clerk's staff. The clerk-administrator may advance any deputy municipal court clerk I to the position of deputy municipal court clerk II without further examination if the deputy municipal court clerk I has served for six months and otherwise meets the qualifications for deputy municipal court clerk II.

(g) One accountant II or I who shall receive the biweekly salary specified in ranges 52.1 and 49.4, respectively, of the salary schedule. Accountant I shall be the entrance position to the accountant series. The clerk-administrator may advance the accountant I to the position of accountant II without further examination if the accountant I has served for one year and otherwise meets the qualifications of accountant II.

(h) Two court services technicians, each of whom shall receive the biweekly salary specified in range 45.1 of the salary schedule.

(i) Two deputy administrative court clerks, each of whom shall receive the biweekly salary specified in range 44.8 of the salary schedule.

(j) One microphotographer who shall receive the biweekly salary specified in range 41.7 of the salary schedule.

(k) One administrative services officer who shall receive the biweekly salary specified in range 58.6 of the salary schedule.

(*l*) One departmental systems coordinator I who shall receive the biweekly salary specified in range 54.2 of the salary schedule.

(m) One court interpreter who shall receive the biweekly salary specified in range 45.1 of the salary schedule.

(n) One court interpreter/coordinator who shall receive the biweekly salary specified in range 48.9 of the salary schedule.

(o) One senior microphotographer who shall receive the biweekly salary specified in range 45.9 of the salary schedule.

(p) Five court reporters who shall receive the biweekly salary specified in range 56.8 of the salary schedule.

(q) One director of collections who shall receive the biweekly salary specified in range 57.8 of the salary schedule.

(r) One court technology manager who shall receive the biweekly salary specified in range 58.6 of the salary schedule.

(s) One departmental systems coordinator II who shall receive the biweekly salary specified in range 56.2 of the salary schedule.

(t) One computer telecommunication technician II who shall receive the biweekly salary specified in range 52.3 of the salary schedule.

SEC. 22. Section 73436 of the Government Code is amended to read:

73436. The clerk-administrator of the East Kern Municipal Court may appoint:

(a) Two regional chief municipal court clerks who shall act as the supervisors of the branches of the court and each of whom shall receive the biweekly salary specified in range 51.0 of the salary schedule.

(b) Six regional senior deputy municipal court clerks, each of whom shall receive the biweekly salary specified in range 48.9 of the salary schedule.

(c) Nineteen regional municipal court clerks III, II, or I, each of whom shall receive the biweekly salary specified in ranges 47.2, 45.1, and 42.8, respectively, of the salary schedule.

Regional municipal court clerk I shall be the entrance position to the clerk's staff. The clerk-administrator may advance any regional municipal court clerk I to the position of regional municipal court clerk II without further examination if the regional municipal court clerk I has served for six months and otherwise meets the qualifications for regional municipal court clerk II.

(d) One account clerk III who shall receive the biweekly salary specified in range 43.0 of the salary schedule.

(e) One court reporter who shall receive the biweekly salary specified in range 56.8 of the salary schedule.

SEC. 23. Section 73436.1 of the Government Code is amended to read:

73436.1. The clerk-administrator of the North Kern Municipal Court may appoint:

(a) Two regional chief municipal court clerks who shall act as the supervisors of the branches of the court and each of whom shall receive the biweekly salary specified in range 51.0 of the salary schedule.

(b) Two regional senior deputy municipal court clerks, each of whom shall receive the biweekly salary specified in range 48.9 of the salary schedule.

(c) Twenty regional municipal court clerks III, II, or I, each of whom shall receive the biweekly salary specified in ranges 47.2, 45.1, and 42.8, respectively, of the salary schedule.

The position of regional municipal court clerk I shall be the entrance position to the clerk's staff. The clerk-administrator may advance any regional municipal court clerk I to the position of regional municipal court clerk II without further examination, if the regional municipal court clerk I has served for six months and otherwise meets the qualifications for regional municipal court clerk II.

(d) One court reporter who shall receive the biweekly salary specified in range 56.8 of the salary schedule.

(e) One regional court financial technician who shall receive the biweekly salary specified in range 48.9 of the salary schedule.

SEC. 24. Section 73436.2 of the Government Code is amended to read:

73436.2. The clerk-administrator of the South Kern Municipal Court may appoint:

(a) Two regional chief municipal court clerk who shall act as the supervisor of the branches of the court and who shall receive the biweekly salary specified in range 51.0 of the salary schedule.

(b) Two regional senior deputy municipal court clerks, each of whom shall receive the biweekly salary specified in range 48.9 of the salary schedule.

(c) Twenty-two regional municipal court clerks III, II, or I, each of whom shall receive the biweekly salary specified in ranges 47.2, 45.1, and 42.8, respectively, of the salary schedule.

The position of regional municipal court clerk I shall be the entrance position to the clerk's staff. The clerk-administrator may advance any regional municipal court clerk I to the position of regional municipal court clerk II without further examination, if the regional municipal court clerk I has served for six months and otherwise meets the qualifications for regional municipal court clerk II.

(d) One account clerk IV who shall receive the biweekly salary specified in range 45.8 of the salary schedule.

(e) One court interpreter who shall receive the biweekly salary specified in range 45.1 of the salary schedule.

(f) One court reporter who shall receive the biweekly salary specified in range 56.8 of the salary schedule.

SEC. 25. Section 73665 of the Government Code is amended to read:

73665. (a) Effective January 1, 1999, the Sheriff of Humboldt County shall assume the duties and responsibilities of the Humboldt County Marshal and the office of the marshal shall be consolidated with the office of sheriff.

Upon the effective date of the consolidation there shall be established within the Humboldt County Sheriff's Department a unit designated as the Court Security Services Division. The Sheriff of Humboldt County shall be responsible for the management and operation of this division, in accordance with this article. Personnel assigned to the Court Security Services Division shall have all the power and shall perform all the duties of marshals and constables as set forth in Sections 71264 to 71269, inclusive.

(b) Neither this article nor any provision hereof, shall be deemed in any manner to limit or otherwise impair the power vested by all other laws, including Section 68073, in the Superior Court of Humboldt County to secure proper provision of court-related services.

SEC. 26. Section 73757 of the Government Code is repealed.

SEC. 27. Section 73757 is added to the Government Code, to read:

73757. (a) In Madera County the majority of the judges of the superior court have voted to consolidate court services and security functions in the office of the Sheriff of Madera County.

(b) The sheriff's functions shall include, but not be limited to, providing all bailiff functions for the unified superior court in Madera County, and all other duties imposed by law upon deputy sheriffs and peace officers generally.

(c) The sheriff shall be responsible for the service of all writs, notices, and other processes issued by any court or other competent authority. Nothing in this section shall be construed as limiting the responsibility or authority of a private person or registered process server from serving process or notices in the manner prescribed by law, nor shall it limit the authority of the sheriff or any other peace officer to serve warrants of arrest or other process specifically directed by any court to the sheriff or any other peace officer.

(d) Each elected marshal holding office in Madera County as of January 1, 2000, shall become an employee of the Madera County Sheriff's Department in the position of Sheriff's Bailiff, as of that date and each elective position of Marshal of the Madera County Municipal Court District is abolished as of that date. Each marshal transferring to the sheriff's department pursuant to this section shall be compensated at not less than the EL-10 step of Salary Range 43 (table B). No transferring marshal shall lose peace officer status or

be demoted or otherwise be adversely affected by the consolidation of court-related services accomplished by this section. Each transferring marshal employed in the position of Sheriff's Bailiff shall be deemed duly qualified for that position and no other qualifications shall be required for that employment or retention in that position. Any transferring marshal wishing to transfer to another position shall meet the qualifications of a peace officer as required by subdivision (a) of Section 832 of the Penal Code and any other requirements of the Madera County civil service system. For purposes of establishing seniority within the class of Sheriff's Bailiff, each transferring marshal shall be credited with the marshal's total years of services to Madera County as a constable and marshal.

SEC. 28. Article 17 (commencing with Section 74000) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 29. Section 75758 of the Government Code is amended and renumbered to read:

73758. The Sheriff of Madera County shall be responsible for the transportation of prisoners held in the county's adult correctional facility to and from necessary court appearances, medical and dental trips, and transfers to or from local, state, or federal correctional facilities. To meet this responsibility, the Sheriff of Madera County shall contract with the county department of corrections, pursuant to Section 831.6 of the Penal Code, to provide these transportation services by qualified personnel of the county department of corrections.

SEC. 30. Section 830.36 of the Penal Code is amended to read:

830.36. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) The Sergeant-at-Arms of each house of the Legislature, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(b) Marshals of the Supreme Court and bailiffs of the courts of appeal, and coordinators of security for the judicial branch, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(c) Court service officer in a county of the second class and third class, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by

the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

SEC. 31. The sole purpose of amendments to Section 68806 of the Government Code and Section 830.36 of the Penal Code contained in this act is to change the title of specified Supreme Court employees. These amendments shall only apply to the Supreme Court. These amendments shall not apply to any trial court or be construed to have any affect on the provision of security in any trial court.

SEC. 32. 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. 33. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 892

An act to amend Sections 6400, 6401, 6401.6, 6405, 6411, 22350, 22351, 22351.5, 22353, and 22357 of the Business and Professions Code, to amend Sections 995.710, 1260.250, and 2025 of the Code of Civil Procedure, to amend Section 68511.3 of the Government Code, to amend Section 45014 of the Public Resources Code, and to amend Section 319.1 of the Welfare and Institutions Code, relating to civil actions.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 6400 of the Business and Professions Code, as added by Section 3 of Chapter 1079 of the Statutes of 1998, is amended to read:

6400. (a) "Unlawful detainer assistant" means any individual who for compensation renders assistance or advice in the prosecution or defense of an unlawful detainer claim or action, including any bankruptcy petition that may affect the unlawful detainer claim or action.

(b) "Unlawful detainer claim" means a proceeding, filing, or action affecting rights or liabilities of any person that arises under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure and that contemplates an adjudication by a court.

(c) "Legal document assistant" means:

(1) Any person who is not exempted under Section 6401 and who provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing himself or herself in a legal matter, or who holds himself or herself out as someone who offers that service or has that authority. This paragraph shall not apply to any individual whose assistance consists merely of secretarial or receptionist services.

(2) A corporation, partnership, association, or other entity that employs or contracts with any person not exempted under Section 6401 who, as part of his or her responsibilities, provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing himself or herself in a legal matter or holds himself or herself out as someone who offers that service or has that authority. This paragraph shall not apply to an individual whose assistance consists merely of secretarial or receptionist services.

(d) "Self-help service" means all of the following:

(1) Completing legal documents in a ministerial manner, selected by a person who is representing himself or herself in a legal matter, by typing or otherwise completing the documents at the person's specific direction.

(2) Providing general published factual information that has been written or approved by an attorney, pertaining to legal procedures, rights, or obligations to a person who is representing himself or herself in a legal matter, to assist the person in representing himself or herself. This service in and of itself, shall not require registration as a legal document assistant.

(3) Making published legal documents available to a person who is representing himself or herself in a legal matter.

(4) Filing and serving legal forms and documents at the specific direction of a person who is representing himself or herself in a legal matter.

(e) "Compensation" means money, property, or anything else of value.

(f) A legal document assistant, including any legal document assistant employed by a partnership or corporation, shall not provide any self-help service for compensation after January 1, 2000, unless the legal document assistant is registered in the county in which the services are being provided.

(g) A legal document assistant shall not provide any kind of advice, explanation, opinion, or recommendation to a consumer

about possible legal rights, remedies, defenses, options, selection of forms, or strategies. A legal document assistant shall complete documents only in the manner prescribed by paragraph (3) of subdivision (d).

(h) This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 2. Section 6401 of the Business and Professions Code, as amended by Section 5 of Chapter 1079 of the Statutes of 1998, is amended to read:

6401. This chapter does not apply to any person engaged in any of the following occupations, provided that the person does not also perform the duties of a legal document assistant in addition to those occupations:

(a) Any government employee who is acting in the course of his or her employment.

(b) A member of the State Bar of California, or his or her employee, paralegal, or agent, or an independent contractor while acting on behalf of a member of the State Bar.

(c) Any employee of a nonprofit, tax-exempt corporation who either assists clients free of charge or is supervised by a member of the State Bar of California who has malpractice insurance.

(d) A licensed real estate broker or licensed real estate salesperson, as defined in Chapter 3 (commencing with Section 10130) of Part 1 of Division 4, who acts pursuant to subdivision (b) of Section 10131 on an unlawful detainer claim as defined in subdivision (b) of Section 6400, and who is a party to the unlawful detainer action.

(e) An immigration consultant, as defined in Chapter 19.5 (commencing with Section 22441) of Division 8.

(f) A person registered as a process server under Chapter 16 (commencing with Section 22350) or a person registered as a professional photocopier under Chapter 20 (commencing with Section 22450) of Division 8.

(g) A person who provides services relative to the preparation of security instruments or conveyance documents as an integral part of the provision of title or escrow service.

(h) A person who provides services that are regulated by federal law.

(i) A person who is employed by, and provides services to, a supervised financial institution, holding company, subsidiary or affiliate.

(j) This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416,

whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 3. Section 6401.6 of the Business and Professions Code is amended to read:

6401.6. A legal document assistant shall not provide service to a client who requires assistance that exceeds the definition of self-help service in subdivision (d) of Section 6400, and shall inform the client that the client requires the services of an attorney.

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

SEC. 4. Section 6405 of the Business and Professions Code is amended to read:

6405. (a) (1) An application for a certificate of registration by an individual shall be accompanied by a bond of twenty-five thousand dollars ($25,000) executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to twenty-five thousand dollars ($25,000).

(2) An application for a certificate of registration by a partnership or corporation shall be accompanied by a bond of twenty-five thousand dollars ($25,000) executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to twenty-five thousand dollars ($25,000). An application for a certificate of registration by a person employed by a partnership or corporation shall be accompanied by a bond of twenty-five thousand dollars ($25,000) only when the partnership or corporation has not posted a bond of twenty-five thousand dollars ($25,000) as required by this subdivision.

(3) 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 county clerk shall, upon filing of the bond, deliver the bond forthwith to the county recorder for recording. The recording fee specified in Section 27361 of the Government Code shall be paid by the registrant. The fee may be paid to the county clerk, who shall transmit it to the recorder.

(c) The fee for filing, canceling, revoking, or withdrawing the bond is seven dollars ($7).

(d) The county recorder shall record the bond and any notice of cancellation, revocation, or withdrawal of the bond, and shall thereafter mail the instrument, unless specified to the contrary, to the person named in the instrument and, if no person is named, to the party leaving it for recording. The recording fee specified in Section 27361 of the Government Code for notice of cancellation,

revocation, or withdrawal of the bond shall be paid to the county clerk, who shall transmit it to the county recorder.

(e) In lieu of the bond required by subdivision (a), a registrant may deposit twenty-five thousand dollars ($25,000) in cash with the county clerk.

(f) If the certificate is revoked, the bond or cash deposit shall be returned to the bonding party or depositor subject to subdivision (g) and the right of a person to recover against the bond or cash deposit under Section 6412.

(g) The county clerk may retain a cash deposit until the expiration of three years from the date the registrant has ceased to do business, or three years from the expiration or revocation date of the registration, in order to ensure there are no outstanding claims against the deposit. A judge of a municipal or superior court may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

SEC. 5. Section 6411 of the Business and Professions Code, as amended by Section 21 of Chapter 1079 of the Statutes of 1998, is amended to read:

6411. It is unlawful for any person engaged in the business or acting in the capacity of a legal document assistant or unlawful detainer assistant to do any of the following:

(a) Make false or misleading statements to the consumer concerning the subject matter, legal issues, or self-help service being provided by the legal document assistant or unlawful detainer assistant.

(b) Make any guarantee or promise to a client or prospective client, unless the guarantee or promise is in writing and the legal document assistant or unlawful detainer assistant has a reasonable factual basis for making the guarantee or promise.

(c) Make any statement that the legal document assistant or unlawful detainer assistant can or will obtain favors or has special influence with a court, or a state or federal agency.

(d) Provide assistance or advice which constitutes the unlawful practice of law pursuant to Section 6125, 6126, or 6127.

(e) Engage in the unauthorized practice of law, including, but not limited to, giving any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies. A legal document assistant shall complete documents only in the manner prescribed by subdivision (d) of Section 6400.

(f) This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 6. Section 22350 of the Business and Professions Code is amended to read:

22350. (a) Any natural person who makes more than 10 services of process within this state during one calendar year, for specific compensation or in expectation of specific compensation, where such compensation is directly attributable to the service of process, shall file and maintain a verified certificate of registration as a process server with the county clerk of the county in which he or she resides or has his or her principal place of business. Any corporation or partnership that derives or expects to derive compensation from service of process within this state shall also file and maintain a verified certificate of registration as a process server with the county clerk of the county in which the corporation or partnership has its principal place of business.

(b) This chapter shall not apply to any of the following:

(1) Any sheriff, marshal, or government employee who is acting within the course and scope of his or her employment.

(2) An attorney or his or her employees.

(3) Any person who is specially appointed by a court to serve its process.

(4) A licensed private investigator or his or her employees.

(5) A professional photocopier registered under Section 22450, or an employee thereof, whose only service of process relates to subpoenas for the production of records, which subpoenas specify that the records be copied by that registered professional photocopier.

SEC. 7. Section 22351 of the Business and Professions Code is amended to read:

22351. (a) The certificate of registration of a registrant who is a natural person shall contain the following:

(1) The name, age, address, and telephone number of the registrant.

(2) A statement, signed by the registrant under penalty of perjury, that the registrant has not been convicted of a felony; or, if the registrant has been convicted of a felony, a copy of a certificate of rehabilitation, expungement, or pardon.

(3) A statement that the registrant has been a resident of this state for a period of one year immediately preceding the filing of the certificate.

(4) A statement that the registrant will perform his or her duties as a process server in compliance with the provisions of law governing the service of process in this state.

(b) The certificate of registration of a registrant who is a partnership or corporation shall contain the following:

(1) The names, ages, addresses, and telephone numbers of the general partners or officers.

(2) A statement, signed by the general partners or officers under penalty of perjury, that the general partners or officers have not been convicted of a felony.

(3) A statement that the partnership or corporation has been organized and existing continuously for a period of one year immediately preceding the filing of the certificate or a responsible managing employee, partner, or officer has been previously registered under this chapter.

(4) A statement that the partnership or corporation will perform its duties as a process server in compliance with the provisions of law governing the service of process in this state.

SEC. 8. Section 22351.5 of the Business and Professions Code is amended to read:

22351.5. (a) At the time of filing the initial certificate of registration, the registrant shall also submit two completed fingerprint cards, for submission to the Department of Justice and the Federal Bureau of Investigation, in order to verify that the registrant has not been convicted of a felony. The clerk shall utilize the Subsequent Arrest Notification Contract provided by the Department of Justice for notifications subsequent to the initial certificate of registration. If, however, the clerk was not under contract with the Department of Justice at the time the initial certificate was filed, registrants shall be required to submit new fingerprint cards at the time of renewal until the notification contract is in place.

(b) If, after processing the completed fingerprint cards, the clerk is advised that the registrant has been convicted of a felony, the presiding judge of the superior court of the county in which the certificate of registration is maintained is authorized to review the criminal record and, unless the registrant is able to produce a copy of a certificate of rehabilitation, expungement, or pardon, as specified in paragraph (2) of subdivision (a) of Section 22351, notify the registrant that the registration is revoked. An order to show cause for contempt may be issued and served upon any person who fails to surrender a registered process server identification card after a notice of revocation.

SEC. 9. Section 22353 of the Business and Professions Code is amended to read:

22353. (a) A certificate of registration shall be accompanied by a bond of two thousand dollars ($2,000) which is executed by an admitted surety insurer and conditioned upon compliance with the provisions of this chapter and all laws governing the service of process in this state. The total aggregate liability on the bond is limited to two thousand dollars ($2,000). As an alternative to the bond, the registrant may deposit with the clerk, cash or money order in the amount of two thousand dollars ($2,000).

(b) The county clerk shall, upon filing the bond, deliver the bond forthwith to the county recorder for recording. The recording fee

specified in Section 27361 of the Government Code shall be paid by the registered professional process server. The fee may be paid to the county clerk, who shall transmit it to the recorder.

(c) The fee for filing, canceling, revoking, or withdrawing the bond is seven dollars ($7).

(d) The county recorder shall record the bond and any notice of cancellation, revocation, or withdrawal of the bond, and shall thereafter mail the instrument, unless specified to the contrary, to the person named in the instrument and, if no person is named, to the party leaving it for recording. The recording fee specified in Section 27361 of the Government Code for the notice of cancellation, revocation, or withdrawal of the bond shall be paid to the county clerk, who shall transmit it to the county recorder.

SEC. 10. Section 22357 of the Business and Professions Code is amended to read:

22357. (a) Any person who recovers damages in any action or proceeding for injuries caused by a service of process which was made by a registrant and did not comply with the provisions of law governing the service of process in this state may recover the amount of the damages from the bond required by Section 22353.

(b) Whenever there has been a recovery against a bond under subdivision (a), the registrant shall file a new bond or cash deposit within 30 days to reinstate the bond or cash deposit to the amount required by Section 22353. If the registrant does not file the bond within 30 days, the certificate of registration shall be revoked and the remainder of the bond forfeited to the county treasury.

SEC. 11. Section 995.710 of the Code of Civil Procedure is amended to read:

995.710. (a) Except as provided in subdivision (e) or to the extent the statute providing for a bond precludes a deposit in lieu of bond or limits the form of deposit, the principal may instead of giving a bond, deposit with the officer any of the following:

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

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

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

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

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

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

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

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

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

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

SEC. 12. Section 1260.250 of the Code of Civil Procedure is amended to read:

1260.250. (a) In a county where both the auditor and the tax collector are elected officials, the court shall by order give the auditor or tax collector the legal description of the property sought to be taken and direct the auditor or tax collector to certify to the court the information required by subdivision (c), and the auditor or tax collector shall promptly certify the required information to the court. In all other counties, the court shall by order give the tax collector the legal description of the property sought to be taken and direct the tax collector to certify to the court the information required by subdivision (c), and the tax collector shall promptly certify the required information to the court.

(b) The court order shall be made on or before the earliest of the following dates:

(1) The date the court makes an order for possession.

(2) The date set for trial.

(3) The date of entry of judgment.

(c) The court order shall require certification of the following information:

(1) The current assessed value of the property together with its assessed identification number.

(2) All unpaid taxes on the property, and any penalties and costs that have accrued thereon while on the secured roll, levied for prior tax years that constitute a lien on the property.

(3) All unpaid taxes on the property, and any penalties and costs that have accrued thereon while on the secured roll, levied for the current tax year that constitute a lien on the property prorated to, but not including, the date of apportionment determined pursuant to Section 5082 of the Revenue and Taxation Code or the date of trial, whichever is earlier. If the amount of the current taxes is not ascertainable at the time of proration, the amount shall be estimated and computed based on the assessed value for the current assessment year and the tax rate levied on the property for the immediately prior tax year.

(4) The actual or estimated amount of taxes on the property that are or will become a lien on the property in the next succeeding tax year prorated to, but not including, the date of apportionment determined pursuant to Section 5082 of the Revenue and Taxation Code or the date of trial, whichever is earlier. Any estimated amount of taxes shall be computed based on the assessed value of the property for the current assessment year and the tax rate levied on the property for the current tax year.

(5) The amount of the taxes, penalties, and costs allocable to one day of the current tax year, and where applicable, the amount allocable to one day of the next succeeding tax year, hereinafter referred to as the "daily prorate."

(6) The total of paragraphs (2), (3), and (4).

(d) If the property sought to be taken does not have a separate valuation on the assessment roll, the information required by this section shall be for the larger parcel of which the property is a part.

(e) The court, as part of the judgment, shall separately state the amount certified pursuant to this section and order that the amount be paid to the tax collector from the award. If the amount so certified is prorated to the date of trial, the order shall include, in addition to the amount so certified, an amount equal to the applicable daily prorate multiplied by the number of days commencing on the date of trial and ending on and including the day before the date of apportionment determined pursuant to Section 5082 of the Revenue and Taxation Code.

(f) Notwithstanding any other provision of this section, if the board of supervisors provides the procedure set forth in Section 5087 of the Revenue and Taxation Code, the court shall make no award of taxes in the judgment.

SEC. 13. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3 and in Section 1985.6, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*) and any intention to record the testimony by stenographic method, through the instant visual display of the testimony. In the latter event, a copy

of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance.

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than

that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection

specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by

discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction

under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of, or in addition to, this sanction, the court may impose a monetary sanction under Section

2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties, or of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the

parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal

the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is a protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) The deposition officer shall not suspend the taking of testimony without stipulation of the party conducting the deposition and the deponent unless any party attending the deposition or the deponent demands the taking of testimony be suspended to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of, or in addition to, this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall

immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on

the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a reasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision

(q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.

(2) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of

any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2), pursuant to a court order under Section 485.230, for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one subsequent deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 14. Section 68511.3 of the Government Code is amended to read:

68511.3. (a) The Judicial Council shall formulate and adopt uniform forms and rules of court for litigants proceeding in forma pauperis. These rules shall provide for all of the following:

(1) Standard procedures for considering and determining applications for permission to proceed in forma pauperis, including, in the event of a denial of such permission, a written statement detailing the reasons for denial and an evidentiary hearing where there is a substantial evidentiary conflict.

(2) Standard procedures to toll relevant time limitations when a pleading or other paper accompanied by such an application is timely lodged with the court and delay is caused due to the processing of the application to proceed in forma pauperis.

(3) Proceeding in forma pauperis at every stage of the proceedings at both the appellate and trial levels of the court system.

(4) The confidentiality of the financial information provided to the court by these litigants.

(5) That the court may authorize the clerk of the court, county financial officer, or other appropriate county officer to make reasonable efforts to verify the litigant's financial condition without compromising the confidentiality of the application.

(6) That permission to proceed in forma pauperis be granted to all of the following:

(A) Litigants who are receiving benefits pursuant to the Supplemental Security Income (SSI) and State Supplemental Payments (SSP) programs (Sections 12200 to 12205, inclusive, of the Welfare and Institutions Code), the California Work Opportunity

and Responsibility to Kids Act (CalWORKs) program (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the Food Stamp program (7 U.S.C. Sec. 2011 et seq.), or Section 17000 of the Welfare and Institutions Code.

(B) Litigants whose monthly income is 125 percent or less of the current monthly poverty line annually established by the Secretary of Health and Human Services pursuant to the Omnibus Budget Reconciliation Act of 1981, as amended.

(C) Other persons when in the court's discretion, this permission is appropriate because the litigant is unable to proceed without using money which is necessary for the use of the litigant or the litigant's family to provide for the common necessaries of life.

(b) (1) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (A) of paragraph (6) of subdivision (a) shall declare under penalty of perjury that they are receiving such benefits and may voluntarily provide the court with their date of birth and social security number or their Medi-Cal identification number to permit the court to verify the applicant's receipt of public assistance. The court may require any applicant, except a defendant in an unlawful detainer action, who chooses not to disclose his or her social security number for verification purposes to attach to the application documentation of benefits to support the claim and all other financial information on a form promulgated by the Judicial Council for this purpose.

(2) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (B) or (C) of paragraph (6) of subdivision (a) shall file a financial statement under oath on a form promulgated by, and pursuant to rules adopted by, the Judicial Council.

(c) The forms and rules adopted by the Judicial Council shall provide for the disclosure of the following information about the litigant:

(1) Current street address.

(2) Date of birth.

(3) Occupation and employer.

(4) Monthly income and expenses.

(5) Address and value of any real property owned directly or beneficially.

(6) Personal property with a value that exceeds five hundred dollars ($500).

The information furnished by the litigant shall be used by the court in determining his or her ability to pay all or a portion of the fees and costs.

(d) At any time after the court has granted a litigant permission to proceed in forma pauperis and prior to final disposition of the case, the clerk of the court, county financial officer, or other appropriate county officer may notify the court of any changed financial

circumstances which may enable the litigant to pay all or a portion of the fees and costs which had been waived. The court may authorize the clerk of the court, county financial officer, or other appropriate county officer to require the litigant to appear before and be examined by the person authorized to ascertain the validity of their indigent status. However, no litigant shall be required to appear more than once in any four-month period. A litigant proceeding in forma pauperis shall notify the court within five days of any settlement or monetary consideration received in settlement of this litigation and of any other change in financial circumstances that affects the litigant's ability to pay court fees and costs. After the litigant either (1) appears before and is examined by the person authorized to ascertain the validity of his or her indigent status or (2) notifies the court of a change in financial circumstances, the court may then order the litigant to pay to the county such sum and in such manner as the court believes is compatible with the litigant's financial ability.

In any action or proceeding in which the litigant whose fees and costs have been waived would have been entitled to recover those fees and costs from another party to the action or proceeding had they been paid, the court may assess the amount of the waived fees and costs against the other party and order the other party to pay that sum to the county or to the clerk and serving and levying officers respectively, or the court may order the amount of the waived fees and costs added to the judgment and so identified by the clerk.

Execution may be issued on any order provided for in this subdivision in the same manner as on a judgment in a civil action. When an amount equal to the sum due and payable to the clerk has been collected upon the judgment, these amounts shall be remitted to the clerk within 30 days. Thereafter, when an amount equal to the sum due to the serving and levying officers has been collected upon the judgment, these amounts shall be due and payable to those officers and shall be remitted within 30 days. If the remittance is not received by the clerk within 30 days or there is a filing of a partial satisfaction of judgment in an amount at least equal to the fees and costs payable to the clerk or a satisfaction of judgment has been filed, notwithstanding any other provision of law, the court may issue an abstract of judgment, writ of execution, or both for recovery of those sums, plus the fees for issuance and execution and an additional fee for administering this section. The county board of supervisors shall establish a fee, not to exceed actual costs of administering this subdivision and in no case exceeding twenty-five dollars ($25), which shall be added to the writ of execution.

(e) Notwithstanding subdivision (a), a person who is sentenced to imprisonment in a state prison or confined in a county jail and, during the period of imprisonment or confinement, files a civil action or notice of appeal of a civil action in forma pauperis shall be required

to pay the full amount of the filing fee to the extent provided in this subdivision.

(1) In addition to the form required by this section for filing in forma pauperis, an inmate shall file a copy of a statement of account for any sums due to the inmate for the six-month period immediately preceding the filing of the civil action or notice of appeal of a civil action. This copy shall be certified by the appropriate official of the Department of Corrections or a county jail.

(2) Upon filing the civil action or notice of appeal of a civil action, the court shall assess, and when funds exist, collect, as a partial payment of any required court fees, an initial partial filing fee of 20 percent of the greater of one of the following:

(A) The average monthly deposits to the inmate's account.

(B) The average monthly balance in the inmate's account for the six-month period immediately preceding the filing of the civil action or notice of appeal.

(3) After payment of the initial partial filing fee, the inmate shall be required to make monthly payments of 20 percent of the preceding month's income credited to the inmate's account. The Department of Corrections shall forward payments from this account to the clerk of the court each time the amount in the account exceeds ten dollars ($10) until the filing fees are paid.

(4) In no event shall the filing fee collected pursuant to this subdivision exceed the amount of fees permitted by law for the commencement of a civil action or an appeal of a civil action.

(5) In no event shall an inmate be prohibited from bringing a civil action or appeal of a civil action solely because the inmate has no assets and no means to pay the initial partial filing fee.

SEC. 15. Section 45014 of the Public Resources Code is amended to read:

45014. (a) Upon the failure of any person to comply with any final order issued by a local enforcement agency or the board, the Attorney General, upon request of the board, shall petition the superior court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining the person or persons from continuing to violate the order or complaint.

(b) Any attorney authorized to act on behalf of the local enforcement agency or the board may petition the superior court for injunctive relief to enforce this part, any term or condition in any solid waste facilities permit, or any standard adopted by the board or the local enforcement agency.

(c) In addition to the administrative imposition of civil penalties pursuant to this part and Article 6 (commencing with Section 42850) of Chapter 16 of Part 3, any attorney authorized to act on behalf of the local enforcement agency or the board may apply, to the clerk of the appropriate court in the county in which the civil penalty was imposed, for a judgment to collect the penalty. The application, which shall include a certified copy of the decision or order in the civil

penalty action, constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered shall include the amount of the court filing fee which would have been due from an applicant who is not a public agency, and has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered, provided that the amount of the unpaid court filing fee shall be paid to the court prior to satisfying any of the civil penalty amount. Thereafter, any civil penalty or judgment recovered shall be paid, to the maximum extent allowed by law, to the board or to the local enforcement agency, whichever is represented by the attorney who brought the action.

SEC. 16. Section 319.1 of the Welfare and Institutions Code is amended to read:

319.1. When the court finds a minor to be a person described by Section 300, and believes that the minor may need specialized mental health treatment while the minor is unable to reside in his or her natural home, the court shall notify the director of the county mental health department in the county where the minor resides. The county mental health department shall perform the duties required under Section 5694.7 for all those minors.

Nothing in this section shall restrict the provisions of emergency psychiatric services to those minors who are involved in dependency cases and have not yet reached the point of ajudication or disposition, nor shall it operate to restrict evaluations at an earlier stage of the proceedings or to restrict orders removing the minor from a detention facility for psychiatric treatment.

SEC. 17. 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 893

An act to amend Section 50199.18 of the Health and Safety Code, relating to taxation.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 50199.18 of the Health and Safety Code is amended to read:

50199.18. This chapter shall remain in effect as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect. However, repeal of this chapter shall not invalidate or in any way affect the duration of any previously allocated low-income tax credits.

CHAPTER 894

An act to add Sections 73.5, 73.6, and 73.7 to the Military and Veterans Code, relating to veterans.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 73.5 is added to the Military and Veterans Code, to read:

73.5. (a) (1) There is hereby created the office of Inspector General for Veterans Affairs to replace the administratively created position of Internal Auditor within the department.

(2) The inspector general shall be appointed by the Governor, subject to Senate confirmation.

(3) (A) The inspector general shall be subject to the direction of the Governor.

(B) The inspector general shall provide ongoing and independent advice to the board regarding any issue that is being considered by the board.

(b) The inspector general shall be responsible for all of the following:

(1) Reviewing the operations and financial condition of each California veterans home and veterans farm and home purchase program. For the purposes of reviewing the operations of each veterans home, the Veterans Home Allied Council and home residents shall have unfettered access to the inspector general.

(2) Reviewing the operation and financial condition of all other veterans programs supported by the state including, but not limited to, county veterans service offices and veterans memorials.

(3) Investigating any allegations of department employee misconduct and reporting any findings of misconduct directly to the secretary, for further action that the secretary may deem necessary.

(c) (1) The inspector general shall conduct a review or investigation, as specified in subdivision (b), if requested to do so by

the Governor, any member of the board, or the secretary. In addition, the inspector general may conduct a review or investigation, as specified in subdivision (b), as he or she deems necessary or if requested by any Member of the Legislature or any member of the public.

(2) Whenever the inspector general conducts a review or investigation pursuant to a request of any Member of the Legislature, the inspector general shall submit a report of his or her findings to that member.

(d) Notwithstanding Section 7550.5 of the Government Code, the inspector general shall submit a report and make any recommendations he or she deems necessary for improving the operations of the veterans programs to the board on at least an annual basis and to the Legislature annually.

SEC. 2. Section 73.6 is added to the Military and Veterans Code, to read:

73.6. (a) The inspector general may receive communications from any individual, including, but not limited to, a participant in a farm and home purchase program or a resident of a California veterans home, who believes he or she may have information that warrants a review or investigation of a veterans program that is supported by the state. The identity of the person providing the information shall be held as confidential by the inspector general and may be disclosed only to the Governor, any member of the board, any Member of the Legislature, or the secretary, as the inspector general deems appropriate and in the furtherance of his or her duties.

(b) In order to properly respond to any allegation, the inspector general shall establish a toll-free public telephone number for the purpose of identifying any alleged wrongdoing regarding veterans programs. This telephone number shall be posted at every California veterans home and throughout all department and county veterans service offices, in clear view of all veterans home residents, employees, and the public. In addition, the telephone number shall be issued to every participant of a home purchase program. When deemed appropriate by the inspector general, he or she shall initiate a review or investigation of any alleged wrongdoing. However, any request to conduct an investigation shall be in writing. The request shall be confidential and is not subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) The identity of the person providing the information that initiated the review or investigation shall not be disclosed without that person's written permission, except to a law enforcement agency in the furtherance of its duties.

SEC. 3. Section 73.7 is added to the Military and Veterans Code, to read:

73.7. (a) Any state officer or employee who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar

acts against an employee of any state department, board, or authority for having disclosed what the employee, in good faith, believed to be improper activities regarding veterans programs that are supported by the state shall be disciplined by adverse action as provided in Section 19572 of the Government Code. If no adverse action is instituted by the appointing power, the State Personnel Board shall take adverse action in the same manner as provided in Section 19583.5 of the Government Code.

(b) In addition to all other causes of action, penalties, or other remedies provided by law, any state officer or employee who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee for having disclosed what the employee, in good faith, believed to be improper activities regarding veterans programs that are supported by the state shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court if the acts of the offending party are proven to be malicious. If liability has been established, the injured party also shall be entitled to reasonable attorney's fees as provided by law.

CHAPTER 895

An act to add and repeal Section 12803.2 of the Government Code, relating to long-term care programs.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. It is the intent of the Legislature to enact legislation to improve the state-level administration of public long-term care programs.

SEC. 2. This act shall be known, and may be cited, as the Mazzoni Long-Term Care Act of 2000.

SEC. 3. Section 12803.2 is added to the Government Code, to read:

12803.2. (a) (1) The Secretary of the California Health and Human Services Agency shall establish and staff within the agency the Long-term Care Council.

(2) The Long-term Care Council shall be an interdepartmental, interagency council that shall coordinate long-term care policy development and program operations and shall develop a strategic plan for long-term care policy. The Long-term Care Council shall provide leadership in developing a long-term care system out of the array of programs, in existence as of January 1, 2000, that provide long-term care services.

(b) The Long-term Care Council, chaired by the Secretary of the California Health and Human Services Agency, shall hold open meetings no less than quarterly and its membership shall consist of the directors of all of the following departments:

(1) California Department of Aging.
(2) State Department of Developmental Services.
(3) Department of Veterans Affairs.
(4) State Department of Health Services.
(5) State Department of Mental Health.
(6) State Department of Social Services.
(7) Department of Rehabilitation.
(8) Office of Statewide Health Planning and Development.

(c) The Long-term Care Council shall have an executive subcommittee that is chaired by the designated Assistant Secretary of the California Health and Human Services Agency and the membership of which is comprised of appropriate deputy directors or other officers, as selected by the director of each respective department and office listed in subdivision (b). The executive subcommittee shall meet as often as necessary to accomplish the tasks enumerated in subdivision (d). The executive subcommittee shall report to the Long-term Care Council at its regularly scheduled quarterly meetings.

(d) The Long-term Care Council shall have all of the following duties:

(1) To promote coordinated planning and policy development with regard to the provision of long-term care services, including, but not limited to, addressing the need for data on the utilization and cost of long-term care services. In performing this duty, the Long-term Care Council shall consider and act on, as appropriate, Chapter 4 of the January 1999 California Health and Human Services Agency report entitled "Report on Long-Term Care Programs and Options for Integration."

(2) To develop strategies to improve quality and accessibility of consumer information on available long-term care programs administered by the state departments represented on the Long-term Care Council.

(3) To develop strategies to better monitor the consumer responsiveness of long-term care services and programs.

(4) To develop strategies to streamline the regulatory process, including licensing and certification functions, while promoting a strong working relationship between state government and local and federal agencies, providers, caregivers, consumers, and other appropriate parties. In performing this duty, the Long-term Care Council shall consider and act on, as appropriate, Chapter 5 of the January 1999 California Health and Human Services Agency report entitled "Report on Long-Term Care Programs and Options for Integration."

(5) To develop priorities and strategies for enhancing the overall availability and quality of long-term care services by identifying and responding to consumers currently being underserved, or outside of, the current long-term care system including, but not limited to, survivors of traumatic brain injury and other underserved populations.

(6) To establish appropriate mechanisms to achieve the objectives outlined in this subdivision, including, for example, by creating ad hoc or standing advisory committees or holding public hearings for the purpose of soliciting and receiving input.

(7) To provide to the Legislature, on or before January 1, 2003, a study of trends affecting the need for long-term care services and other supportive services for the elderly and for younger adults with disabilities. The council shall seek appropriate support and assistance from foundations, the federal government, and universities, in order to carry out the study within existing state resources. In developing and overseeing the study, the council shall also seek the cooperation and advice of the Legislative Analyst, foundations, qualified California universities, local government, and appropriate organizations representing the elderly and disabled. The study may examine all of the following topics:

(A) Population trends.

(B) Sociodemographic characteristics.

(C) Housing and transportation needs.

(D) Health care and long-term care delivery and utilization.

(E) Social support structures.

(8) To establish priorities and develop timelines for carrying out the duties prescribed by this subdivision. Initially, the Long-term Care Council shall include among its first priorities the development of methods to improve consumer access to long-term care information.

(9) Prior to submitting budgets to the Department of Finance, to review and make recommendations on aspects of the represented department budgets that pertain to long-term care programs and services.

(10) To report annually to the Legislature, commencing January 2001, on progress to date on the duties enumerated in this subdivision and making note of any additional legislation or resources needed.

(e) The Legislative Analyst shall include in the Analysis of the 2001–02 Governor's Budget and the Analysis of the 2006–07 Governor's Budget a summary of spending on state long-term care programs and, to the extent feasible, estimates of the population served by each program.

(f) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

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CHAPTER 896

An act to amend Section 2105 of the Corporations Code and to add Section 1524.2 to the Penal Code, relating to search warrants.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 2105 of the Corporations Code is amended to read:

2105. (a) A foreign corporation shall not transact intrastate business without having first obtained from the Secretary of State a certificate of qualification. To obtain that certificate it shall file, on a form prescribed by the Secretary of State, a statement and designation signed by a corporate officer stating:

(1) Its name and the state or place of its incorporation or organization.

(2) The address of its principal executive office.

(3) The address of its principal office within this state, if any.

(4) The name of an agent upon whom process directed to the corporation may be served within this state. Such designation shall comply with the provisions of subdivision (b) of Section 1502.

(5) (A) Its irrevocable consent to service of process directed to it upon the agent designated and to service of process on the Secretary of State if the agent so designated or the agent's successor is no longer authorized to act or cannot be found at the address given.

(B) Consent under this paragraph extends to service of process directed to the foreign corporation's agent in California for a search warrant issued pursuant to Section 1524.2 of the Penal Code, for records or documents that are in the possession of the foreign corporation and are located outside of this state. This subparagraph shall apply to a foreign corporation that is a party or a nonparty to the matter for which the search warrant is sought.

(6) If it is a corporation which will be subject to the Insurance Code as an insurer, it shall so state that fact.

(b) Annexed to that statement and designation shall be a certificate by an authorized public official of the state or place of incorporation of the corporation to the effect that such corporation is an existing corporation in good standing in that state or place or, in the case of an association, an officers' certificate stating that it is a validly organized and existing business association under the laws of a specified foreign jurisdiction.

(c) Before it may be designated by any foreign corporation as its agent for service of process, any corporate agent must comply with Section 1505.

SEC. 2. Section 1524.2 is added to the Penal Code, to read:

1524.2. (a) As used in this section, the following terms have the following meanings:

(1) The terms "electronic communication services" and "remote computing services" shall be construed in accordance with the Electronic Communications Privacy Act in Chapter 121 (commencing with Section 2701) of Part I of Title 18 of the United State Code Annotated. This section shall not apply to corporations that do not provide those services to the general public.

(2) An "adverse result" occurs when notification of the existence of a search warrant results in:

(A) Danger to the life or physical safety of an individual.

(B) A flight from prosecution.

(C) The destruction of or tampering with evidence.

(D) The intimidation of potential witnesses.

(E) Serious jeopardy to an investigation or undue delay of a trial.

(3) "Applicant" refers to the peace officer to whom a search warrant is issued pursuant to subdivision (a) of Section 1528.

(4) "California corporation" refers to any corporation or other entity that is subject to Section 102 of the Corporations Code, excluding foreign corporations.

(5) "Foreign corporation" refers to any corporation that is qualified to do business in this state pursuant to Section 2105 of the Corporations Code.

(6) "Properly served" means that a search warrant has been delivered by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity listed in Section 2110 of the Corporations Code.

(b) The following provisions shall apply to any search warrant issued pursuant to this chapter allowing a search for records that are in the actual or constructive possession of a foreign corporation that provides electronic communication services or remote computing services to the general public, where those records would reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications.

(1) When properly served with a search warrant issued by the California court, a foreign corporation subject to this section shall provide to the applicant, all records sought pursuant to that warrant within five business days of receipt, including those records maintained or located outside this state.

(2) Where the applicant makes a showing and the magistrate finds that failure to produce records within less than five business days would cause an adverse result, the warrant may require production of records within less than five business days. A court may reasonably extend the time required for production of the records upon finding

that the foreign corporation has shown good cause for that extension and that an extension of time would not cause an adverse result.

(3) A foreign corporation seeking to quash the warrant must seek relief from the court that issued the warrant within the time required for production of records pursuant to this section. The issuing court shall hear and decide that motion no later than five court days after the motion is filed.

(4) The foreign corporation shall verify the authenticity of records that it produces by providing an affidavit that complies with the requirements set forth in Section 1561 of the Evidence Code. Those records shall be admissible in evidence as set forth in Section 1562 of the Evidence Code.

(c) A California corporation that provides electronic communication services or remote computing services to the general public, when served with a warrant issued by another state to produce records that would reveal the identity of the customers using those services, data stored by, or on behalf of, the customer, the customer's usage of those services, the recipient or destination of communications sent to or from those customers, or the content of those communications, shall produce those records as if that warrant had been issued by a California court.

(d) No cause of action shall lie against any foreign or California corporation subject to this section, its officers, employees, agents, or other specified persons for providing records, information, facilities, or assistance in accordance with the terms of a warrant issued pursuant to this chapter.

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 897

An act to amend Section 9358 of the Government Code, relating to retirement.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 9358 of the Government Code is amended to read:

9358. (a) On and after January 1, 2000, the state's contribution on account of liability for benefits under this chapter shall be established in accordance with Section 20814.

(b) When the actuarial value of assets exceeds the present value of benefits as of the most recently completed valuation, resulting in a 0 percent contribution rate for the state, as determined by the board, the board may reduce the member contribution rates described in Sections 9357, 9357.01, 9357.05, and 9357.15 for the same fiscal year in which the state rate is reduced to 0 percent.

However, for any fiscal year during which the state's contribution rate is greater than 0 percent, the members of the system shall pay the applicable member contribution rates described in Sections 9357, 9357.01, 9357.05, and 9357.15.

CHAPTER 898

An act to amend Sections 1365 and 1365.5 of the Civil Code, relating to common interest developments.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1365 of the Civil Code is amended to read:

1365. Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all of its members the following documents:

(a) A pro forma operating budget, which shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in bold type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(B) As of the end of the fiscal year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These

amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). In lieu of complying with the requirements set forth in this clause, an association that is obligated to issue a review of their financial statement pursuant to subdivision (b) may include in the review a statement containing all of the information required by this clause.

(C) The percentage that the amount determined for purposes of clause (ii) subparagraph (B) equals of the amount determined for purposes of clause (i) of subparagraph (B).

(3) A statement as to whether the board of directors of the association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

A copy of the operating budget shall be annually distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year.

(b) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars ($75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all of its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point boldface type on the front page of the summary of the budget.

(d) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

(e) (1) A summary of the association's property, general liability, and earthquake and flood insurance policies, which shall be distributed within 60 days preceding the beginning of the association's fiscal year, that includes all of the following information about each policy:

(A) The name of the insurer.

(B) The type of insurance.

(C) The policy limits of the insurance.

(D) The amount of deductibles, if any.

(2) The association shall, as soon as reasonably practicable, notify its members by first-class mail if any of the policies described in paragraph (1) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the association receives any notice of nonrenewal of a policy described in paragraph (1), the association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(3) To the extent that any of the information required to be disclosed pursuant to paragraph (1) is specified in the insurance policy declaration page, the association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its members.

(4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-point boldface type, the following statement: "This summary of the association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."

SEC. 2. Section 1365.5 of the Civil Code is amended to read:

1365.5. (a) Unless the governing documents impose more stringent standards, the board of directors of the association shall do all of the following:

(1) Review a current reconciliation of the association's operating accounts on at least a quarterly basis.

(2) Review a current reconciliation of the association's reserve accounts on at least a quarterly basis.

(3) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(4) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.

(5) Review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.

(b) The signatures of at least two persons, who shall be members of the association's board of directors, or one officer who is not a member of the board of directors and a member of the board of directors, shall be required for the withdrawal of moneys from the association's reserve accounts.

(c) (1) The board of directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

(2) However, the board may authorize the temporary transfer of money from a reserve fund to the association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the board has made a written finding, recorded in the board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the common interest development, temporarily delay the restoration. The board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is subject to the limitation imposed by Section 1366. The board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

(d) When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the association shall notify the members of the association of that decision in the next available mailing to all members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. Unless the governing documents impose more stringent standards, the association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the association at the association's office.

(e) At least once every three years the board of directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association which excludes the association's reserve account for that period. The board shall review this study annually and shall consider and implement necessary adjustments to the board's analysis of the reserve account requirements as a result of that review.

The study required by this subdivision shall at a minimum include:

(1) Identification of the major components which the association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than 30 years.

(2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1) during and at the end of their useful life.

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(f) As used in this section, "reserve accounts" means both of the following:

(1) Moneys that the association's board of directors has identified for use to defray the future repair or replacement of, or additions to, those major components which the association is obligated to maintain.

(2) The funds received and not yet expended or disposed from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising from any construction or design defects. These funds shall be separately itemized from funds described in paragraph (1).

(g) As used in this section, "reserve account requirements" means the estimated funds which the association's board of directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the association is obligated to maintain.

(h) This section does not apply to an association that does not have a "common area" as defined in Section 1351.

CHAPTER 899

An act to add Chapter 4 (commencing with Section 101825) to Part 4 of Division 101 of the Health and Safety Code, relating to health authorities.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Chapter 4 (commencing with Section 101825) is added to Part 4 of Division 101 of the Health and Safety Code, to read:

CHAPTER 4. SAN LUIS OBISPO COUNTY HOSPITAL AUTHORITY

Article 1. General

101825. The following definitions shall apply for purposes of this chapter:

(a) "County" means the County of San Luis Obispo.

(b) "Governing board" means the governing body of the hospital authority.

(c) "Hospital authority" means the separate public agency that may be established pursuant to this chapter by the San Luis Obispo County Board of Supervisors to manage, administer, and control General Hospital and the Family Care Centers.

(d) "General Hospital" means the licensed general acute care hospital that, as of January 1, 1999, owned and operated by the County of San Luis Obispo, together with all additions to, or replacements of, that facility.

(e) "Family care centers" means the outpatient, ambulatory care clinic facilities that are, as of January 1, 1999, licensed as part of General Hospital, as well as all additional or replacement outpatient facilities that may be licensed as part of General Hospital after January 1, 1999.

Article 2. Hospital Authority

101827. The board of supervisors of the county may, by ordinance, establish a hospital authority separate and apart from the county for the purpose of effecting a transfer of the management, administration, and control of General Hospital and the Family Care Centers in accordance with Section 14000.2 of the Welfare and Institutions Code. A hospital authority established pursuant to this chapter shall be strictly and exclusively dedicated to the management, administration, and control of General Hospital and the Family Care Centers within parameters set forth in this chapter, and in accordance with ordinances, bylaws, and contracts adopted by the board of supervisors, which shall not be in conflict with this chapter, Section 1442.5 of this code, or Section 17000 of the Welfare and Institutions Code.

101828. (a) A hospital authority established pursuant to this chapter shall be governed by a board that is comprised of San Luis Obispo County residents and subject to final approval by a majority vote of the county board of supervisors.

(b) The governing board shall consist of 11 members as follows:

(1) One member from each of the five supervisorial districts. Each district member shall be appointed by the supervisor elected from that supervisorial district. Supervisors shall avoid appointment of individuals who may be expected to have significant or frequent conflicts of interest with the hospital authority's interests or goals.

(2) One member recommended by the exclusive representative for the employee association with the largest membership in San Luis Obispo County.

(3) One member recommended by the San Luis Obispo County Health Commission to serve as a health care consumer representative.

(4) One member recommended by the San Luis Obispo County Medical Society.

(5) One member shall be either the Family Care Center Medical Director or the county health officer.

(6) One member shall be the General Hospital's Chief of Medical Staff or Vice Chief of Staff, or the designee of the Chief of Medical Staff of the General Hospital.

(7) One member shall be the county auditor-controller or the designee of the county auditor-controller.

(c) Members of the board of directors for the hospital authority shall meet qualifications specified in the enabling ordinance for the hospital authority.

(d) The board of supervisors may, upon a majority vote and after duly noticed public hearing, amend the composition of the board of directors, but shall neither increase nor decrease the number of members of the board of directors.

(e) The mission of the hospital authority shall be consistent with the mission statement adopted by the San Luis Obispo County Board of Supervisors as part of the 1998–99 final budget and shall consist of the management, administration, and other control, as determined by the board of supervisors, of General Hospital and the Family Care Centers, in a manner that ensures appropriate, quality, and cost-effective medical care as required of counties by Section 17000 of the Welfare and Institutions Code, and, to the extent feasible, other populations to the extent feasible and appropriate.

(f) The board of supervisors shall adopt bylaws for General Hospital and the Family Care Centers that set forth those matters, related to the operation of General Hospital and the Family Care Centers by the hospital authority, that the board of supervisors deems necessary and appropriate. The bylaws shall become operative upon approval by a majority vote of the governing board. Any changes or amendments to the bylaws shall be by majority vote of the governing board.

(g) The hospital authority created and appointed pursuant to this section is a duly constituted governing body within the meaning of Sections 1250 and 70035 of Title 22 of the California Code of Regulations as currently written or subsequently amended.

101829. Unless otherwise provided by the board of supervisors by way of resolution, the hospital authority is empowered, or the board of supervisors is empowered on behalf of the hospital authority, to apply as a public agency for one or more licenses for the provision of health care pursuant to statutes and regulations governing licensing as currently written or subsequently amended.

101830. In the event of a change of license ownership, the governing body of the hospital authority shall comply with the obligations of governing bodies of general acute care hospitals generally as set forth in Section 70701 of Title 22 of the California Code of Regulations, as currently written or subsequently amended, as well as the terms and conditions of the license. The hospital authority shall be the responsible party with respect to compliance with these obligations, terms, and conditions.

101831. Any transfer by the county to the hospital authority of the administration, management, and control of General Hospital and the Family Care Centers, whether or not the transfer includes the surrendering by the county of the existing general acute care hospital license and corresponding application for a change of ownership of the license, shall not affect the eligibility of the county, or in the case of a change of license ownership, the hospital authority, to do any of the following:

(a) Participate in, and receive allocations pursuant to, the California Healthcare for the Indigent Program (CHIP).

(b) Receive supplemental reimbursements from the Emergency Services and Supplemental Payments Fund created pursuant to Section 14085.6 of the Welfare and Institutions Code.

(c) Receive appropriations from the Medi-Cal Inpatient Payment Adjustment Fund without relieving the county of its obligation to make intergovernmental transfer payments related to the Medi-Cal Inpatient Payment Adjustment Fund pursuant to Section 14163 of the Welfare and Institutions Code.

(d) Receive Medi-Cal capital supplements pursuant to Section 14085.5 of the Welfare and Institutions Code.

(e) Receive any other funds that would otherwise be available to a county hospital.

101832. Any transfer described in Section 101831 shall not otherwise disqualify the county, or in the case of a change in license ownership, the hospital authority, from participating in any of the following:

(a) Other funding sources either specific to county hospitals or county ambulatory care clinics or for which there are special provisions specific to county hospitals or to county ambulatory care clinics.

(b) Funding programs in which the county, on behalf of General Hospital, the Family Care Centers, and the San Luis Obispo County Health Agency had participated prior to the creation of the hospital authority, or would otherwise be qualified to participate in had the hospital authority not been created, and administration, management, and control not been transferred by the county to the hospital authority, pursuant to this chapter.

(c) A hospital authority created pursuant to this chapter shall be a legal entity separate and apart from the county and shall file the statement required by Section 53051 of the Government Code. The hospital authority shall be a government entity separate and apart from the county, and shall not be considered to be an agency, division, or department of the county. The hospital authority shall not be governed by, nor be subject to, the charter of the county and shall not be subject to policies or operational rules of the county, including, but not limited to, those relating to personnel and procurement.

101833. Any contract executed by and between the county and the hospital authority shall provide that liabilities or obligations of the hospital authority with respect to its activities pursuant to the contract shall be the liabilities or obligations of the hospital authority, and shall not become the liabilities or obligations of the county. Any contract executed by and between the county and the hospital authority shall provide for the indemnification of the county by the hospital authority for liabilities as specifically set forth in the contract, except that the contract shall include a provision that the county shall remain liable for its own negligent acts. Indemnification by the hospital authority shall not be construed as divesting the county from its ultimate responsibility for compliance with Section 17000 of the Welfare and Institutions Code.

101834. Any liabilities or obligations of the hospital authority with respect to the liquidation or disposition of the hospital authority's

assets upon termination of the hospital authority shall not become the liabilities or obligations of the county, except for any liabilities or obligations to the State of California.

101835. Any obligation of the hospital authority, statutory, contractual, or otherwise, shall be the obligation solely of the hospital authority and shall not be the obligation of the county, except for any obligations, statutory, contractual, or otherwise, due the State of California.

101836. Notwithstanding any other provision of this section, any transfer of the administration, management, or assets of General Hospital or the Family Care Centers, or both, whether or not accompanied by a change in licensing, shall not relieve the county of the ultimate responsibility for indigent care pursuant to Section 17000 of the Welfare and Institutions Code.

101837. Notwithstanding the provisions of this article relating to the obligations and liabilities of the hospital authority, a transfer of control or ownership of General Hospital and the Family Care Centers shall confer onto the hospital authority all the rights and duties set forth in state law with respect to hospitals owned or operated by a county.

101838. A transfer of the maintenance, operation, and management or ownership of General Hospital to the hospital authority shall comply with the provisions of Section 14000.2 of the Welfare and Institutions Code.

101839. A transfer of maintenance, operation, and management or ownership to the hospital authority may be made with or without the payment of a purchase price by the hospital authority and otherwise upon the terms and conditions that the parties may mutually agree, which terms and conditions shall include those found necessary by the board of supervisors to ensure that the transfer will constitute an ongoing material benefit to the county and its residents. In the event of such a transfer:

(a) A transfer of the maintenance, operation, and management to the hospital authority shall not be construed as empowering the hospital authority to transfer any ownership interest of the county in General Hospital and the Family Care Centers except as otherwise approved by the board of supervisors.

(b) The board of supervisors shall retain control over the use of General Hospital and the Family Care Centers physical plant and facilities except as otherwise specifically provided for in lawful agreements entered into by the board of supervisors. Any lease agreement or other agreement between the county and the hospital authority shall provide that county premises shall not be sublet without the approval of the board of supervisors.

101840. The statutory authority of a board of supervisors to prescribe rules that authorize a county hospital to integrate its services with those of other hospitals into a system of community service that offers free choice of hospitals to those requiring hospital

care, as set forth in Section 14000.2 of the Welfare and Institutions Code, shall apply to the hospital authority upon a transfer of maintenance, operation, and management or ownership of General Hospital or the Family Care Centers, or both, to the hospital authority.

101841. (a) The hospital authority shall have the power to acquire and possess real or personal property and may dispose of real or personal property other than that owned by the county, as may be necessary for the performance of its functions. The hospital authority shall have the power to sue or be sued, to employ personnel, and to contract for services required to meet its obligations.

(b) This section shall not be construed to authorize the hospital authority to contract for services that were performed by county civil service employees on June 30, 1999, unless the hospital authority determines that contracting for these services is either of the following:

(1) Necessary to ensure the continued availability of certain health care services.

(2) Necessary to meet the funding constraints presented by available financing.

(c) If the hospital authority determines that contracting out for the services pursuant to subdivision (b) is necessary, the authority shall provide for full communication between the hospital authority and county civil services employees, pursuant to Section 3505 of the Government Code. The communications shall include, but not be limited to, the extent to which the decision to contract out for services could result in the termination or unemployment of county civil service employees.

101842. Members of the governing board of the hospital authority shall not be vicariously liable for injuries caused by the act or omission of the hospital authority to the extent that protection applies to members of governing boards of local public entities generally under Section 820.9 of the Government Code.

101843. The hospital authority shall be a public agency subject to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code).

101844. The county, the hospital authority, the governing board, employees of the county working at General Hospital or the Family Care Centers, and employees of the hospital authority shall comply with the following requirements, in addition to any general requirements of law that are not inconsistent with the following requirements:

(a) Any transfer of functions from county employee classifications to a hospital authority established pursuant to this section shall result in the recognition by the hospital authority of the employee organization that represented the classifications performing those functions at the time of the transfer.

(b) In exercising its powers to employ personnel, as set forth in Section 101840, the board of supervisors shall adopt, and the hospital shall implement, a personnel transition plan. The personnel transition plan shall require all of the following:

(1) Ongoing communications to employees and recognized employee organizations regarding the impact of the transition on existing General Hospital and Family Care Centers employees and employee classifications.

(2) Meeting and conferring on all of the following issues:

(A) The timeframe for which the transfer of personnel shall occur. The timeframe shall be subject to modification by the board of supervisors as appropriate, but in no event shall it exceed one year from the effective date of transfer of governance from the board of supervisors to the hospital authority.

(B) A specified period of time during which employees of the county impacted by the transfer of governance may elect to be appointed to vacant positions with the county for which they are qualified.

(C) A specified period of time during which employees of the county impacted by the transfer of governance may elect to be considered for reinstatement into positions with the county for which they are qualified and eligible.

(D) The possible preservation of pensions, health benefits, and other applicable accrued benefits of employees of the county impacted by the transfer of governance. Notwithstanding any other provision of law, the personnel transition plan may provide for participation by hospital authority employees in the San Luis Obispo County Pension Trust.

(c) Nothing in subdivision (b) shall be construed as prohibiting the hospital authority from determining the number of employees, the number of full-time equivalent positions, the job descriptions, and the nature and extent of classified employment positions, subject to all applicable laws and regulations for licensed medical providers.

(d) Employees of the hospital authority are public employees for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code relating to claims and actions against public entities and public employees.

(e) Any hospital authority created pursuant to this chapter shall have sole authority to negotiate memorandums of understanding with appropriate employee organizations.

101845. The hospital authority created pursuant to the chapter may borrow from the county and the county may lend the hospital authority funds or issue revenue anticipation notes to obtain those funds necessary to operate General Hospital and the Family Care Centers and otherwise provide medical services.

101845.1. The hospital authority shall be subject to state and federal taxation laws that are applicable to counties generally.

101845.2. The hospital authority, the county, or both, may engage in marketing, advertising, and promotion of the medical and health care services made available to the community at General Hospital and the Family Care Centers.

101846. The hospital authority shall not be a "person" subject to suit under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code).

101847. Notwithstanding Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code relating to incompatible activities, no member of the hospital authority administrative staff shall be considered to be engaged in activities inconsistent and incompatible with his or her duties as a result of employment or affiliation with the county.

101848. The hospital authority may use a computerized management information system in connection with the administration of the medical center.

101848.1. Information maintained in the management information system or in other filing and records maintenance systems that is confidential and protected by law shall not be disclosed except as provided by law.

101848.2. The records of the hospital authority, whether paper records, records maintained in the management information system, or records in any other form that relate to trade secrets or to payment rates or the determination thereof, or which relate to contract negotiations with providers of health care, shall not be subject to disclosure pursuant to the California Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted shall be subject to this same exemption. The information, if compelled pursuant to an order of a court of competent jurisdiction or administrative body in a manner permitted by law, shall be limited to in camera review, which, at the discretion of the court, may include the parties to the proceeding, and shall not be made a part of the court file unless sealed.

101848.3. Notwithstanding any other law, the governing board may order that a meeting held solely for the purpose of discussion or taking action on hospital authority trade secrets, as defined in subdivision (d) of Section 3426.1 of the Civil Code, shall be held in closed session. The requirements of making a public report of actions taken in closed session and the vote or abstention of every member present may be limited to a brief general description devoid of the information constituting the trade secret.

101848.4. The governing board may delete the portion or portions containing trade secrets from any documents that were finally

approved in the closed session that are provided to persons who have made the timely or standing request.

101848.45. Nothing in this chapter shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

101848.5. The provisions of this chapter shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2 of the Government Code.

101848.6. Open sessions of the hospital authority shall constitute official proceedings authorized by law within the meaning of Section 47 of the Civil Code. The privileges set forth in that section with respect to official proceedings shall apply to open sessions of the hospital authority.

101848.7. The hospital authority shall be a public agency for purposes of eligibility with respect to grants and other funding and loan guarantee programs. Contributions to the hospital authority shall be tax deductible to the extent permitted by state and federal law. Nonproprietary income of the hospital authority shall be exempt from state income taxation.

101848.8. Contracts by and between the hospital authority and the state and contracts by and between the hospital authority and providers of health care, goods, or services may be let 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.

101848.9. Provisions of the Evidence Code, the Government Code, including the Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), the Civil Code, the Business and Professions Code, and other applicable law pertaining to the confidentiality of peer review activities of peer review bodies shall apply to the peer review activities of the hospital authority. Peer review proceedings shall constitute an official proceeding authorized by law within the meaning of Section 47 of the Civil Code and those privileges set forth in that section with respect to official proceedings shall apply to peer review proceedings of the hospital authority. If the hospital authority is required by law or contractual obligation to submit to the state or federal government peer review information or information relevant to the credentialing of a participating provider, that submission shall not constitute a waiver of confidentiality. The laws pertaining to the confidentiality of peer review activities shall be together construed as extending, to the extent permitted by law, the maximum degree of protection of confidentiality.

101848.10. Notwithstanding any other law, Section 1461 shall apply to hearings on the reports of hospital medical audit or quality assurance committees.

101848.11. The hospital authority shall carry general liability insurance to the extent sufficient to cover its activities.

101849. In the event the board of supervisors determines that the hospital authority should no longer function for the purposes as set forth in this chapter, the board of supervisors may, by ordinance, terminate the activities of the hospital authority and expire the hospital authority as an entity, subject to Section 1442.5 in that code and any applicable public hearing requirements.

101849.1. A hospital authority that is created pursuant to this article but which does not obtain the administration, management, and control of General Hospital and the Family Care Centers or which has those duties and responsibilities revoked by the board of supervisors shall not be empowered with the powers enumerated in this chapter.

101849.2. The county shall establish baseline data reporting requirements for General Hospital and the Family Care Centers consistent with the Medically Indigent Health Care Reporting System (MICRS) program established pursuant to Section 16910 of the Welfare and Institutions Code and shall collect that data for at least one year prior to the final transfer of General Hospital and the Family Care Centers to the hospital authority established pursuant to this chapter. The baseline data shall include, but not be limited to, all of the following:

(a) Inpatient days by facility by quarter.

(b) Outpatient visits by facility by quarter.

(c) Emergency room visits by facility by quarter.

(d) Number of unduplicated users receiving services within the medical center.

101849.3. Upon transfer of General Hospital and the Family Care Centers, the county shall establish baseline data reporting requirements for each of the General Hospital and the Family Care Centers inpatient facilities consistent with data reporting requirements of the Office of Statewide Health Planning and Development, including, but not limited to, monthly average daily census by facility for all of the following:

(a) Acute care, excluding newborns.

(b) Newborns.

101849.4. From the date of transfer of General Hospital and the Family Care Centers to the hospital authority, the hospital authority shall provide the county with quarterly reports specified in Sections 101849.2 and 101849.3 and any other data required by the county. The county, in consultation with health care consumer groups, shall develop other data requirements that shall include, at a minimum, reasonable measurements of the changes in medical care for the indigent population of San Luis Obispo County that result from the transfer of the administration, management, and control of General

Hospital and the Family Care Centers from the county to the hospital authority.

CHAPTER 900

An act to amend Sections 4056 4074, 4115, and 4116 of the Business and Professions Code, relating to drugs, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 4056 of the Business and Professions Code is amended to read:

4056. (a) Notwithstanding any provision of this chapter, a licensed hospital that contains 100 beds or fewer, and that does not employ a full-time pharmacist, may purchase drugs at wholesale for administration, under the direction of a physician, or for dispensation by a physician, to persons registered as inpatients of the hospital, to emergency cases under treatment in the hospital, or, under the conditions described in subdivision (f), to persons registered as outpatients in a rural hospital as defined in Section 124840 of the Health and Safety Code. The hospital shall keep records of the kind and amounts of drugs so purchased and administered or dispensed, and the records shall be available for inspection by all properly authorized personnel of the board.

(b) No hospital shall be entitled to the benefits of subdivision (a) until it has obtained a license from the board. Each license shall be issued to a specific hospital and for a specific location.

(c) Each application for a license under this section shall be made on a form furnished by the board. Upon the filing of the application and payment of the fee prescribed in subdivision (a) of Section 4400, the executive officer of the board shall issue a license authorizing the hospital to which it is issued to purchase drugs at wholesale pursuant to subdivision (a). The license shall be renewed annually on or before November 1 of each year upon payment of the renewal fee prescribed in subdivision (b) of Section 4400 and shall not be transferable.

(d) The form of application for a license under this section shall contain the name and address of the applicant, the number of beds, whether the applicant is a licensed hospital, whether it does or does not employ a full-time pharmacist, the name of its chief medical officer, and the name of its administrator.

(e) The board may deny, revoke, or suspend a license issued under this section in the manner and for the grounds specified in Article 19 (commencing with Section 4300).

(f) A physician himself or herself may dispense drugs to outpatients directly pursuant to subdivision (a) only if the physician determines that it is in the best interest of the patient that a particular drug regimen be immediately commenced or continued, and the physician reasonably believes that a pharmacy located outside the hospital is not available and accessible at the time of dispensation to the patient within 30 minutes of the hospital pharmaceutical services or within a 30-mile radius from the hospital pharmaceutical services by means of the method of transportation the patient states that he or she intends to use. The quantity of drugs dispensed to any outpatient pursuant to this subdivision shall be limited to that amount necessary to maintain uninterrupted therapy during the period when pharmaceutical services outside the hospital are not readily available or accessible, but shall not exceed a 72-hour supply. The physician shall ensure that the label on the drug contains all the information required by Section 4076.

(g) A rural hospital, as defined in Section 124840 of the Health and Safety Code, shall obtain information regarding the hours of operation of each pharmacy located within the 30 minute or 30-mile radius of the hospital. The hospital shall update this information annually, and shall make this information available to its medical staff.

(h) A licensed hospital that contains 100 beds or fewer, does not employ a full-time pharmacist, and purchases drugs at wholesale for administration or dispensation pursuant to subdivision (a), shall retain the services of a pharmacist consultant to monitor and review the pharmaceutical services provided by the hospital to inpatients of the hospital, and the dispensing of drugs by physicians to outpatients pursuant to subdivision (f).

(i) This section shall not be construed to eliminate the requirements of Section 11164 or 11167 of the Health and Safety Code.

SEC. 2. Section 4074 of the Business and Professions Code is amended to read:

4074. (a) A pharmacist shall inform a patient orally or in writing of the harmful effects of a drug dispensed by prescription if the drug poses substantial risk to the person consuming the drug when taken in combination with alcohol or if the drug may impair a person's ability to drive a motor vehicle, whichever is applicable, and provided the drug is determined by the board pursuant to subdivision (b) to be a drug or drug type for which this warning shall be given.

(b) The board may by regulation require additional information or labeling.

(c) This section shall not apply to drugs furnished to patients in conjunction with treatment or emergency services provided in

health facilities or, except as provided in subdivision (d), to drugs furnished to patients pursuant to subdivision (a) of Section 4056.

(d) A health facility shall establish and implement a written policy to ensure that each patient shall receive information regarding each medication given at the time of discharge and each medication given pursuant to subdivision (a) of Section 4056. This information shall include the use and storage of each medication, the precautions and relevant warnings, and the importance of compliance with directions. This information shall be given by a pharmacist or registered nurse, unless already provided by a patient's prescriber, and the written policy shall be developed in collaboration with a physician, a pharmacist, and a registered nurse. The written policy shall be approved by the medical staff. Nothing in this subdivision or any other provision of law shall be construed to require that only a pharmacist provide this consultation.

SEC. 3. Section 4115 of the Business and Professions Code is amended to read:

4115. (a) Notwithstanding any other provision of law, a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.

(b) This section does not authorize the performance of any tasks specified in subdivision (a) by a pharmacy technician without a pharmacist on duty, nor does this section authorize the use of a pharmacy technician to perform tasks specified in subdivision (a) except under the direct supervision and control of a pharmacist.

(c) This section does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist.

(d) The board shall adopt regulations to specify tasks pursuant to subdivision (a) that a pharmacy technician may perform under the direct supervision and control of a pharmacist. Any pharmacy that employs a pharmacy technician to perform tasks specified in subdivision (a) shall do so in conformity with the regulations adopted by the board pursuant to this subdivision.

(e) (1) No person shall act as a pharmacy technician without first being registered with the board as a pharmacy technician as set forth in Section 4202.

(2) The registration requirements in paragraph (1) and Section 4202 shall not apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital until July 1, 1997.

(3) The registration requirements in paragraph (1) and Section 4202 shall not apply during the first year of employment for a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, or for a person receiving treatment in a facility operated

by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

(f) The performance of duties by a pharmacy technician shall be under the direct supervision and control of a pharmacist. The pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician. A pharmacy technician may perform the duties, as specified in subdivision (a), only under the immediate, personal supervision and control of a pharmacist. Any pharmacist responsible for a pharmacy technician shall be on the premises at all times, and the pharmacy technician shall be within the pharmacist's view. A pharmacist shall indicate verification of the prescription by initialing the prescription label before the medication is provided to the patient.

This subdivision shall not apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility. Notwithstanding the exemption in this subdivision, the requirements of subdivisions (a) and (b) shall apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility.

(g) (1) The ratio of pharmacy technicians performing the tasks specified in subdivision (a) to pharmacists shall not exceed one to one, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117. This ratio is applicable to all practice settings, except for an inpatient of a licensed health facility, a patient of a licensed home health agency, as specified in paragraph (2), an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, and for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

(2) The board may adopt regulations establishing the ratio of pharmacy technicians performing the tasks specified in subdivision (a) to pharmacists applicable to the filling of prescriptions of an inpatient of a licensed health facility and for a patient of a licensed home health agency. Any ratio established by the board pursuant to this subdivision shall allow, at a minimum, at least one pharmacy technician for each pharmacist, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117.

(h) Notwithstanding subdivisions (b) and (f), the board shall by regulation establish conditions to permit the temporary absence of a pharmacist for breaks and lunch periods pursuant to Section 512 of the Labor Code and the orders of the Industrial Welfare Commission without closing the pharmacy. During these temporary absences, a pharmacy technician may, at the discretion of the pharmacist,

remain in the pharmacy but may only perform nondiscretionary tasks. The pharmacist shall be responsible for a pharmacy technician and shall review any task performed by a pharmacy technician during the pharmacist's temporary absence. Nothing in this subdivision shall be construed to authorize a pharmacist to supervise pharmacy technicians in greater ratios than those described in subdivision (g).

SEC. 4. Section 4116 of the Business and Professions Code is amended to read:

4116. (a) No person other than a pharmacist, an intern pharmacist, an authorized officer of the law, or a person authorized to prescribe shall be permitted in that area, place, or premises described in the license issued by the board wherein controlled substances or dangerous drugs or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, dispensed, or repackaged. However, a pharmacist shall be responsible for any individual who enters the pharmacy for the purposes of receiving consultation from the pharmacist or performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the pharmacy if the pharmacist remains present in the pharmacy during all times as the authorized individual is present.

(b) (1) The board may, by regulation, establish reasonable security measures consistent with this section in order to prevent unauthorized persons from gaining access to the area, place, or premises or to the controlled substances or dangerous drugs or dangerous devices therein.

(2) The board shall, by regulation, establish conditions for the temporary absence of a pharmacist for breaks and lunch periods pursuant to Section 512 of the Labor Code and the orders of the Industrial Welfare Commission without closing the pharmacy and removing authorized personnel from the pharmacy. These conditions shall ensure the security of the pharmacy and its operations during the temporary absence of the pharmacist and shall allow, at the discretion of the pharmacist, nonpharmacist personnel to remain and perform any lawful activities during the pharmacist's temporary absence.

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.

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 allow patients to obtain necessary medications and to allow pharmacists to take temporary breaks without closing the pharmacy, it is necessary that this act take effect immediately.

CHAPTER 901

An act to amend Section 290 of the Penal Code, relating to sex offenders.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(C) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, on a form as may be required by the Department of Justice.

(D) In addition, every person who is a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less

than once every 90 days in a manner established by the Department of Justice.

(E) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person

committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come

under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person

expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law

enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the

statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraph (5), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension

that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the

time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems

relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where

the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a,

Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth

Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California or California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sexual offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of

subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, on a form as may be required by the Department of Justice.

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of

Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and

shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been

explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the

Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is

granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This

subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public

of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be

considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California or California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to

publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.2. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or a community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(C) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, on a form as may be required by the Department of Justice.

(D) In addition, every person who is a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days in a manner established by the Department of Justice.

(E) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j,

267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this

section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because

of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment

shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraph (5), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or

places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has ever been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those

subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California or California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.3. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(C) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, and place of employment including the name and address of the employer, on a form as may be required by the Department of Justice.

(D) In addition, every person who is a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the

name and address of the employer, in a manner established by the Department of Justice.

(E) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person

committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come

under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person

expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law

enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraph (5), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of

law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236,

provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department

of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized

pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.4. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or a community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, on a form as may be required by the Department of Justice.

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of

Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and

shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been

explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:

(A) A preregistration statement in writing, signed by the person, giving information that may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the

Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is

granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This

subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public

of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has ever been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be

considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California or California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to

publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of

not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.5. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, and place of employment including the name and address of the employer, on a form as may be required by the Department of Justice.

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare

and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or

she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct

between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy

to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward

the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record

and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This

subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public

of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be

considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to

publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) of subdivision (n) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.6. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or a community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(C) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, and place of employment including the name and address of the employer, on a form as may be required by the Department of Justice.

(D) In addition, every person who is a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(E) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a)

of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of

those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division

6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register. If a registrant fails to furnish proof of residence within this 30-day period, he or she shall be guilty of a misdemeanor.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate

registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraph (5), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by

imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she hall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be

temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has ever been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any

offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race;

physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an

employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 1.7. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or a community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is located, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides or is located. If all of the addresses or locations are within the same jurisdiction, the person shall provide the registering authority with all of the addresses or locations where he or she regularly resides or is located.

(C) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be required by the Department of Justice, with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register

annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or temporary location, and place of employment including the name and address of the employer, on a form as may be required by the Department of Justice.

(E) In addition, every person who has been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

(G) Persons required to register in their state of residence who are out-of-state residents employed in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former

Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A) or any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, which demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized.

The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that

the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice.

(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.

(c) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, granted conditional release without supervised probation, or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in

paragraph (3), shall be subject to registration under the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.

(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, or commitment, pursuant to

paragraph (1) of subdivision (a). The registration shall consist of all of the following:

(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the day he or she is allowed to register.

(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) (1) If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location. The law enforcement agency or agencies shall, within three days after receipt of this information, forward a copy of the change of address or location information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence or location.

(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's

change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three days of its receipt.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Except as provided in paragraphs 5 and 7, any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this

subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined

on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (1) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in paragraph (1) have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(3) Persons notified pursuant to paragraph (1) may disclose the information provided by the law enforcement agency in the manner and to the extent authorized by the law enforcement agency.

(4) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(5) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(6) For purposes of this section, "likely to encounter" means both of the following:

(A) That the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis.

(B) The types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(7) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(8) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(9) A law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a designated law enforcement entity may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense specified in paragraph (1) of subdivision (a) of Section 290.4, and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(v) Has ever been adjudicated a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit mayhem, or Section 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 187, subdivision (a) of Section 192, or Section 203, 206, 207, or 236, provided that the offense is a felony, subdivision (a) of Section 273a, Section 273d or 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 243.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459, provided the offense is of the first degree, Section 597 or 646.9, subdivision (d), (h), or (i) of Section 647, Section 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those

subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, "law enforcement agency" means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(2) Any public or private educational institution, day care facility, or any child care custodian described in Section 11165.7, or any employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to paragraph (3) of subdivision (m) or paragraph (4) of subdivision (n) that is provided by a law enforcement agency or an employee of a law enforcement agency shall be immune from civil liability.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.

SEC. 2. 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. (A) Section 1.1 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 1193. 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 290 of the Penal Code, (3) AB 1340 and SB 1275 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1193, in which case Sections 1, 1.2, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(B) Section 1.2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 1340. 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 290 of the Penal Code, (3) SB 1275 and AB 1193 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1340, in which case Sections 1, 1.1, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(C) Section 1.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and SB 1275. 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 290 of the Penal Code, (3) AB 1193 and AB 1340 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 1275, in which case Sections 1, 1.1, 1.2, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative

(D) Section 1.4 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 1193 and AB 1340. It shall

only become operative if (1) all three bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 290 of the Penal Code, (3) SB 1275 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1193 and AB 1340, in which case Sections 1, 1.1, 1.2, 1.3, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(E) Section 1.5 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, SB 1275 and AB 1193. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 290 of the Penal Code, (3) AB 1340 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1275 and AB 1193, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.6, and 1.7 of this bill shall not become operative.

(F) Section 1.6 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, SB 1275 and AB 1340. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 290 of the Penal Code, (3) SB 341 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1275 and AB 1340, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.7 of this bill shall not become operative.

(H) Section 1.7 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, SB 1275, AB 1193 and AB 1340. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2000, (2) all four bills amend Section 290 of the Penal Code, and (3) this bill is enacted after those other three bills, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6 of this bill shall not become operative.

CHAPTER 902

An act to amend Sections 1023, 1047, 1048, and 1049 of, and to repeal Section 1023.5 of, the Military and Veterans Code, relating to veterans.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1023 of the Military and Veterans Code is amended to read:

1023. (a) The department may sue and be sued in any of the courts of this state. All property held by the department for the home shall be held in trust for the state and for the use and benefit of the home. The administrator shall manage the home and administer its

affairs, and, subject to the direction of the director, adopt rules and regulations for the government of the home in conformity as nearly as possible to the rules and regulations of the United States Veterans' Administration for their facilities.

(b) The Director of General Services may lease or let any real property held by the department for the home, and not needed for any direct or immediate purpose of the home, to any entity or person upon terms and conditions determined to be in the best interests of the home. In any leasing or letting, primary consideration shall be given to the use of real property for agricultural purposes, and except as provided in Section 1048, all money received in connection therein shall be deposited in the General Fund to the credit of, and shall augment the current appropriation for the support of, the home.

SEC. 2. Section 1023.5 of the Military and Veterans Code is repealed.

SEC. 3. Section 1047 of the Military and Veterans Code is amended to read:

1047. (a) The administrator shall maintain a Morale, Welfare, and Recreation Fund that shall be used, at the discretion of the administrator and subject to the approval of the secretary, to provide for the general welfare of the veterans, including, but not limited to, providing for operations of the Veterans' Home Exchange, hobby shop, motion picture theater, library, band, and any other function that is operated for the morale, welfare, and recreation of the veterans, and to pay for newspapers, chapel expenses, welfare and entertainment expenses, sport activities, celebrations, and any other activity that is for the morale, welfare, and recreation of the veterans.

(b) Money in the Morale, Welfare, and Recreation Fund may not be expended for any of the following:

(1) Medical treatments or any other treatment for which reimbursement is available from other sources.

(2) Maintenance of the physical plant of the home.

(3) Any function, operation, or activity that is not related to the morale, welfare, or recreation of the veterans.

(4) Any function, operation, or activity for which an alternate source of funding is available.

(c) Appropriations from the General Fund for the purposes described in paragraphs (1) and (5) of subdivision (b) may not be reduced for the purpose of, or to have the effect of, requiring increased expenditures from the Morale, Welfare, and Recreation Fund for those described purposes.

(d) The administrator shall prepare an itemized report that is organized by category and accounts for all expenditures made from the Morale, Welfare, and Recreation Fund during the previous fiscal year and shall submit the report on or before August 20 of each year to all of the following:

(1) The secretary.

(2) The fiscal committees of the Assembly and the Senate.

(3) The committees of the Assembly and the Senate that have subject matter jurisdiction over veterans' affairs.

SEC. 2. Section 1048 of the Military and Veterans Code is amended to read:

1048. (a) The Moral, Welfare, and Recreation Fund shall include proceeds from operations of the Veterans' Home Exchange, revenue derived from the issuance of prisoner-of-war special license plates pursuant to Section 5101.5 of the Vehicle Code, all funds derived from golf course green fees and range ball fees, all donations to the fund, interest earned on invested funds, funds derived from the estates of deceased members, and any other moneys or property described in this chapter, including, but not limited to, moneys and properties received by the home from estate assets located outside the home, regardless of amount.

(b) The administrator shall prepare an itemized report that is organized by category and accounts for all funds deposited into the Morale, Welfare, and Recreation Fund and transmitted to the Controller under Section 1047 during the previous fiscal year and shall submit the report on or before August 20 of each year to all of the following:

(1) The secretary.

(2) The fiscal committees of the Assembly and the Senate.

(3) The committees of the Assembly and the Senate that have subject matter jurisdiction over veterans' affairs.

SEC. 3. Section 1049 of the Military and Veterans Code is amended to read:

1049. Moneys in the Morale, Welfare, and Recreation Fund maintained under subdivision (a) of Section 1047 may be used to establish or operate a Veterans' Home Exchange that may conduct any lawful endeavor which, in the judgment of the administrator, will benefit the veterans, except as prohibited under subdivision (b) of Section 1047. The administrator may establish the Veterans' Home Exchange to operate at a profit.

CHAPTER 903

An act to amend Sections 1777.5, 1777.7, 3070, 3075, and 3080 of, to add Sections 3073.1 and 3098 to, and to add and repeal Section 3073.2 of, the Labor Code, relating to apprenticeship programs.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. The Legislature finds and declares that apprenticeship programs are a vital part of the educational system in

California. It is the purpose and goal of this legislation to strengthen the regulation of apprenticeship programs in California, to ensure that all apprenticeship programs approved under Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code meet the high standards necessary to prepare apprentices for the workplaces of the future and to prevent the exploitation of apprentices by employers or apprenticeship programs. It is further the intent of the Legislature that apprenticeship programs should make active efforts to recruit qualified men, women, and minorities and train them in the skills needed for the workplace.

SEC. 2. Section 1777.5 of the Labor Code is amended to read:

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either (1) the apprenticeship standards and apprentice agreements under which he or she is training or (2) the rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval or denial of the apprenticeship program shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that the program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen

stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(*l*) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract. At the end of each fiscal year the California Apprenticeship Council shall make grants to each apprenticeship program in proportion to the number of hours of training provided by the program for which the program did not

receive contributions, weighted by the regular rate of contribution for the program. These grants shall be made from funds collected by the California Apprenticeship Council during the fiscal year pursuant to this subdivision from contractors that employed registered apprentices but did not contribute to an approved apprenticeship program. All these funds received during the fiscal year shall be distributed as grants.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000) or 20 working days.

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

SEC. 3. Section 1777.7 of the Labor Code is amended to read:

1777.7. (a) A contractor or subcontractor that knowingly violates Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars ($100) for each full calendar day of noncompliance. The amount of this penalty shall be based on consideration whether the violation was a good faith mistake due to inadvertence. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars ($300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(b) (1) In the event a contractor or subcontractor is determined by the Administrator of Apprenticeship to have knowingly violated any provision of Section 1777.5, the Administrator shall deny to the contractor or subcontractor, both individually and in the name of the business entity under which the contractor or subcontractor is doing business, the right to bid on or receive any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship.

(2) An affected contractor or subcontractor may obtain a review of the debarment or civil penalty by transmitting a written request to the office of the Administrator within 30 days after service of the order of debarment or civil penalty. If the Administrator receives no request for review within 30 days after service, the order of

debarment or civil penalty shall become final for the period authorized.

(3) Within 20 days of the timely receipt of a request for hearing, the Administrator shall provide the contractor or subcontractor the opportunity to review any evidence the Administrator may offer at the hearing. The Administrator shall also promptly disclose to the contractor or subcontractor any nonprivileged documents obtained after the 20-day time limit.

(4) Within 90 days of the timely receipt of the a request for hearing, a hearing shall be commenced before an impartial hearing officer designated by the Administrator and possessing the qualifications of an administrative law judge pursuant to Section 11502 of the Government Code. The contractor or subcontractor shall have the burden of showing compliance with Section 1777.5. The decision to debar shall be reviewed by a hearing officer or court only for abuse of discretion.

(5) Within 45 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the debarment or civil penalty. The decision shall contain a notice of findings, findings, and an order. This decision shall be deemed the final decision of the Administrator and shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Administrator. Within 15 days of issuance of the decision, the hearing officer may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

(6) An affected contractor or subcontractor may obtain review of the final decision of the Administrator by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the final decision to debar or to assess a civil penalty. If no petition for a writ of mandate is filed within 45 days after service of the final decision, the order shall become final. If the petitioner claims that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the entire record.

(7) The Administrator may file a certified copy of a final order with the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business.

(c) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

(1) The contract executed between the contractor and the subcontractor or the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(d) In lieu of the penalty provided for in subdivision (a) or (b), the director may for a first-time violation and with the concurrence of the apprenticeship program, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(f) The interpretation and enforcement of Section 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council.

SEC. 4. Section 3070 of the Labor Code is amended to read:

3070. There is in the Division of Apprenticeship Standards the California Apprenticeship Council, which shall be appointed by the Governor, composed of six representatives each from employers or employer organizations and employee organizations, that sponsor apprenticeship programs under this chapter, respectively, geographically selected, and of two representatives of the general public. The Director of Industrial Relations, or his or her permanent and best qualified designee, and the Superintendent of Public Instruction, or his or her permanent and best qualified designee, and the Chancellor of the California Community Colleges, or his or her permanent and best qualified designee, shall also be members of the California Apprenticeship Council. The chairperson shall be elected by vote of the California Apprenticeship Council. Beginning with appointments in 1985, three representatives each of employers and employees, and one public representative shall serve until January

15, 1989. In 1987, three representatives each of the employers and employees, and one public representative shall serve until January 15, 1991. Any member whose term expires on January 15, 1986, shall continue to serve until January 15, 1987. Thereafter each member shall serve for a term of four years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his or her predecessor shall be appointed for the remainder of that term. Each member of the council shall receive the sum of one hundred dollars ($100) for each day of actual attendance at meetings of the council, for each day of actual attendance at hearings by the council or a committee thereof pursuant to Section 3082, and for each day of actual attendance at meetings of other committees established by the council and approved by the Director of Industrial Relations, together with his or her actual and necessary traveling expenses incurred in connection therewith.

SEC. 5. Section 3073.1 is added to the Labor Code, to read:

3073.1. (a) The division shall randomly audit apprenticeship programs approved under this chapter during each five-year period commencing January 1, 2000, to ensure that the program is complying with its standards, that all on-the-job training is performed by journeymen, that all related and supplemental instruction required by the apprenticeship standards is being provided, that all work processes in the apprenticeship standards are being covered, and that graduates have completed the apprenticeship program's requirements. The division shall examine each apprenticeship program to determine whether apprentices are graduating from the program on schedule or dropping out and to determine whether graduates of the program have obtained employment as journeymen. Every apprenticeship program sponsor shall have a duty to cooperate with the division in conducting an audit.

(b) Audit reports shall be presented to the California Apprenticeship Council and shall be made public, except that the division shall not make public information which would infringe on the privacy of individual apprentices. The division shall recommend remedial action to correct deficiencies recognized in the audit report, and the failure to correct deficiencies within a reasonable period of time shall be grounds for withdrawing state approval of a program. Nothing shall prevent the division from conducting more frequent audits of apprenticeship programs where deficiencies have been identified.

(c) The division shall give priority in conducting audits to programs that have been identified as having deficiencies. The division may conduct simplified audits for programs with fewer than five registered apprentices.

SEC. 6. Section 3073.2 is added to the Labor Code, to read:

3073.2. (a) The California Apprenticeship Council may adopt industry-specific training criteria for use by apprenticeship programs subject to the requirements of this chapter. The adoption of these

criteria, as established following notice and workshop, under Section 212.01 of Title 8 of the California Code of Regulations shall not be subject to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(b) The audits conducted by the division pursuant to Section 3073.1 shall ensure that any applicable training criteria are followed.

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

SEC. 7. Section 3075 of the Labor Code is amended to read:

3075. (a) An apprenticeship program may be administered by a joint apprenticeship committee, unilateral management or labor apprenticeship committee, or an individual employer. Programs may be approved by the chief in any trade in the state or in a city or trade area, whenever the apprentice training needs justify the establishment. Where a collective bargaining agreement exists, a program shall be jointly sponsored unless either party to the agreement waives its right to representation in writing. Joint apprenticeship committees shall be composed of an equal number of employer and employee representatives.

(b) For purposes of this section, the apprentice training needs in the building and construction trades shall be deemed to justify the approval of a new apprenticeship program only if any of the following conditions are met:

(1) There is no existing apprenticeship program approved under this chapter serving the same craft or trade and geographic area.

(2) Existing apprenticeship programs approved under this chapter that serve the same craft or trade and geographic area do not have the capacity, or neglect or refuse, to dispatch sufficient apprentices to qualified employers at a public works site who are willing to abide by the applicable apprenticeship standards.

(3) Existing apprenticeship programs approved under this chapter that serve the same trade and geographic area have been identified by the California Apprenticeship Council as deficient in meeting their obligations under this chapter.

(c) Notwithstanding subdivision (b), the California Apprenticeship Council may approve a new apprenticeship program if special circumstances, as established by regulation, justify the establishment of the program.

SEC. 8. Section 3080 of the Labor Code is amended to read:

3080. (a) For the purpose of providing greater diversity of training or continuity of employment, any apprentice agreement made under this chapter may in the discretion of the California Apprenticeship Council be signed by an association of employers or an organization of employees instead of by an individual employer. In that case, the apprentice agreement shall expressly provide that the association of employers or organization of employees does not assume the obligation of an employer but agrees to use its best

endeavors to procure employment and training for an apprentice with one or more employers who will accept full responsibility, as herein provided, for all the terms and conditions of employment and training set forth in the agreement between the apprentice and employer association or employee organization during the period of the apprentice's employment. The apprentice agreement shall also expressly provide for the transfer of the apprentice, subject to the approval of the California Apprenticeship Council, to an employer or employers who shall sign a written agreement with the apprentice, and if the apprentice is a minor, with the apprentice's parent or guardian, as specified in Section 3079, contracting to employ the apprentice for the whole or a definite part of the total period of apprenticeship under the terms and conditions of employment and training set forth in the apprentice agreement.

(b) All apprenticeship programs with more than one employer or an association of employers shall include provisions sufficient to ensure meaningful representation of the interests of apprentices in the management of the program.

SEC. 9. Section 3098 is added to the Labor Code, to read:

3098. An apprentice registered in an approved apprenticeship program in any of the building and construction trades shall be employed only as an apprentice when performing any construction work for an employer that is a party, individually or through an employer association, to any apprenticeship agreement or standards covering that individual.

CHAPTER 904

An act to add Section 69613.15 to the Education Code, relating to state special schools.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 69613.15 is added to the Education Code, immediately following Section 69613.1, to read:

69613.15. (a) Commencing on January 1, 2000, the list of shortage areas furnished pursuant to Section 69613.1 shall include the state special schools as a category separate from special education.

(b) By May 7, 2000, the Department of Personnel Administration shall conduct and complete a survey of the salaries paid to public school teachers employed by school districts located in the state who

teach pupils with learning disabilities similar to those of pupils taught in the state special schools.

CHAPTER 905

An act to amend Sections 16119 and 16122 of the Welfare and Institutions Code, relating to human services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 16119 of the Welfare and Institutions Code is amended to read:

16119. (a) At the time application for adoption of a child who is potentially eligible for Adoption Assistance Program benefits is made, and at the time immediately prior to the finalization of the adoption decree, the department or the licensed adoption agency, whichever is appropriate, shall provide the prospective adoptive family with information, in writing, on the availability of Adoption Assistance Program benefits, with an explanation of the difference between these benefits and foster care payments. The department or the licensed adoption agency shall also provide the prospective adoptive family with information, in writing, on the availability of reimbursement for the nonrecurring expenses incurred in the adoption of the Adoption Assistance Program eligible child.

(b) The department or the licensed agency shall encourage families that elect not to sign an adoption assistance agreement to sign a deferred adoption assistance agreement.

(c) The department or the county, whichever is responsible for determining the child's eligibility for the Adoption Assistance Program, shall assess the needs of the child and the resources of the family to meet those needs, including the family's financial status relative to available statewide median income data.

(d) The amount of an adoption assistance cash benefit, if any, shall be a negotiated amount based upon the needs of the child and the ability of the family to meet the child's needs. There shall be no means test used to determine an adoptive family's eligibility for the Adoption Assistance Program. The statewide median income data shall be used as a guideline to assist agencies and adoptive families in negotiating the amount of the Adoption Assistance Program benefit to be awarded to families to meet a child's needs for which other resources are unavailable. In all instances, actual living expenses, including any unusual expenses, shall be considered in evaluating the

amount of benefit needed by the family to meet the child's needs. In those instances where an otherwise eligible child does not require a cash benefit, Medi-Cal eligibility may be established for the child, as needed.

(e) In applying the statewide median income guideline, agencies shall be guided by the following assumptions:

(1) Families with income below the statewide median income may qualify for an amount up to the state approved basic foster care rate plus any state approved specialized care increment for which the child would be eligible if in foster care.

(2) Families with income above the statewide median income shall be considered to be able to meet the normal child rearing expenses encompassed in the state approved basic foster family home care rate, but may qualify to receive benefits in an amount up to the state approved specialized care increments the child would be eligible to receive if in foster care.

(f) The department or the licensed adoption agency shall inform the prospective adoptive family regarding the county responsible for providing financial aid to the adoptive family in an amount determined pursuant to Sections 16120 and 16120.1.

SEC. 2. Section 16119 of the Welfare and Institutions Code is amended to read:

16119. (a) At the time application for adoption of a child who is potentially eligible for Adoption Assistance Program benefits is made, and at the time immediately prior to the finalization of the adoption decree, the department or the licensed adoption agency, whichever is appropriate, shall provide the prospective adoptive family with information, in writing, on the availability of Adoption Assistance Program benefits, with an explanation of the difference between these benefits and foster care payments. The department or the licensed adoption agency shall also provide the prospective adoptive family with information, in writing, on the availability of reimbursement for the nonrecurring expenses incurred in the adoption of the Adoption Assistance Program eligible child. The department or licensed adoption agency shall also provide the prospective adoptive family with information on the availability of mental health services through the Medi-Cal program or other programs.

(b) The department or the licensed agency shall encourage families that elect not to sign an adoption assistance agreement to sign a deferred adoption assistance agreement.

(c) The department or the county, whichever is responsible for determining the child's eligibility for the Adoption Assistance Program, shall assess the needs of the child and the circumstances of the family.

(d) (1) The amount of an adoption assistance cash benefit, if any, shall be a negotiated amount based upon the needs of the child and the circumstances of the family. There shall be no means test used to

determine an adoptive family's eligibility for the Adoption Assistance Program. In those instances where an otherwise eligible child does not require a cash benefit, Medi-Cal eligibility may be established for the child, as needed.

(2) For purposes of paragraph (1), "circumstances of the family" includes the family's ability to incorporate the child into the household in relation to the lifestyle, standard of living, and future plans and to the overall capacity to meet the immediate and future plans and needs, including education, of the child.

(e) The department or the licensed adoption agency shall inform the prospective adoptive family regarding the county responsible for providing financial aid to the adoptive family in an amount determined pursuant to Sections 16120 and 16120.1.

(f) The department or the licensed adoption agency shall inform the prospective adoptive family that the adoptive parents will continue to receive benefits in the agreed upon amount unless one of the following occurs:

(1) The department determines that the adoptive parents are no longer legally responsible for the support of the child.

(2) The department determines that the child is no longer receiving support from the adoptive family.

(3) The adoption assistance payment exceeds the amount that the child would have been eligible for in a licensed foster home.

(4) The adoptive parents demonstrate a need for an increased payment.

(5) The adoptive parents voluntarily reduce or terminate payments.

(6) The adopted child has an extraordinary need that was not anticipated at the time the amount of the adoption assistance was originally negotiated.

SEC. 3. Section 16122 of the Welfare and Institutions Code is amended to read:

16122. (a) It is the intent of the Legislature in enacting this chapter to provide children who would otherwise remain in long-term foster care with permanent adoptive homes. It is also the intent of this Legislature to encourage private adoption agencies to continue placing these children, and in so doing, to achieve a substantial savings to the state in foster care costs.

(b) From any funds appropriated for this purpose, the state shall compensate private adoption agencies licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code for costs of placing for adoption children eligible for Adoption Assistance Program benefits pursuant to Section 16120.

These agencies shall be compensated for otherwise unreimbursed costs for the placement of these children in an amount not to exceed a total of three thousand five hundred dollars ($3,500) per child adopted. Half of the compensation shall be paid at the time the adoptive placement agreement is signed. The remainder shall be

paid at the time the adoption petition is granted by the court. Requests for compensation shall conform to claims procedures established by the department. This section shall not be construed to authorize reimbursement to private agencies for intercountry adoption services.

(c) Effective July 1, 1999, the maximum amount of reimbursement pursuant to subdivision (b) shall be five thousand dollars ($5,000).

SEC. 4. Section 2 of this bill incorporates amendments to Section 16119 of the Welfare and Institutions Code proposed by both this bill and AB 390. 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 16119 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 390, in which case Section 16119 of the Welfare and Institutions Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 390, at which time Section 2 of this bill shall become operative.

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 changes in provisions of law relating to children placed in foster care, as well as provisions relating to facilities licensed by the State Department of Social Services at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 906

An act to add Section 12554 to the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 12554 is added to the Welfare and Institutions Code, to read:

12554. (a) Notwithstanding Section 12552, special circumstances shall also include the administration and payment by the department pursuant to this section of a recurring special need allowance to every eligible recipient who has a guide dog, signal dog, or other service dog, to pay for dog food and other costs associated with the dog's care and maintenance.

(b) For purposes of this section, the special need allowance shall be thirty-five dollars ($35) per month.

(c) The department shall mail an application for the allowance to each recipient of benefits under the federal Social Security Disability Insurance (SSDI) program who is known to the department to have a guide dog, signal dog, or other service dog, or who has requested an application from the department, and who is a legal resident of this state. The application shall include a disclosure of the applicant's resources and all sources and amounts of the applicant's income. The application shall be upon a standard form prescribed by regulations of the department and containing a written declaration that the affirmation is made under penalty of perjury subject to prosecution as the crime of perjury under the Penal Code. The recipient or, if the recipient is incapable, another person as described in Section 11054 may make the affirmation. In order to establish eligibility pursuant to subdivision (e), the applicant shall also be required to present a proof of income statement from the federal Social Security Administration. The department shall grant the special need allowance upon the basis of the affirmation by mailing a monthly warrant in the amount indicated in subdivision (b) to the recipient.

(d) The county welfare department shall cooperate in assisting the recipient in completing his or her application for the special need allowance authorized by this section.

(e) For purposes of this section, "eligible recipient" means any person legally residing in this state who is a recipient of benefits under the federal Social Security Disability Insurance (SSDI) program, provided for pursuant to Title II of the federal Social Security Act (42 U.S.C. Sec. 401, et seq.) and whose income and resources are not in excess of the federal poverty level. For purposes of determining eligibility under this section, income and resources shall be defined in the same manner as those terms are used in determining eligibility for aid under Chapter 3 (commencing with Section 12000).

SEC. 2. There is hereby appropriated the sum of sixty nine thousand dollars ($69,000) from the General Fund to the State Department of Social Services for implementation of this act during the period commencing January 1, 2000, and ending June 30, 2000. Not more than 10 percent of the funds appropriated pursuant to this section shall be expended on administrative costs.

CHAPTER 907

An act to add Section 17537.11 to the Business and Professions Code, relating to advertising.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. The Legislature finds and declares that consumers, particularly senior citizens, have been harmed by the deceptive and unfair use of coupons in misleading sales promotion schemes. For example, some merchants make most of their sales of goods and services with so-called free, gift, or prize coupons. In fact, the coupon is not free, a gift, or a prize because the consumer must buy something to receive the coupon's benefit and moreover, since most of the sales are made in conjunction with the coupon, the coupon-based price does not represent a real discount from the merchant's regular selling price. It is the intent of the Legislature that the unfair and deceptive use of coupons be prohibited and that this act be liberally construed so as to effectuate that purpose.

SEC. 2. Section 17537.11 is added to the Business and Professions Code, to read:

17537.11. (a) It is unlawful for any person to offer a coupon that is in any manner untrue or misleading.

(b) It is unlawful for any person to offer a coupon described as "free" or as a "gift," "prize," or other similar term if (1) the recipient of the coupon has to pay money or buy any good or service to obtain or use the coupon and (2) the person offering the coupon or anyone honoring the coupon made the majority of his or her sales in the preceding year in connection with one or more "free," "gift," "prize," or similarly described coupons.

(c) For purposes of this section:

(1) "Coupon" includes any coupon, certificate, document, discount, or similar matter that purports to entitle the user of the coupon to obtain goods or services for free or for a special or reduced price.

(2) "Sale" includes lease or rent.

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 908

An act to add and repeal Sections 6066.3 and 6066.4 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 6066.3 is added to the Revenue and Taxation Code, to read:

6066.3. (a) A city, county, or city and county may collect information from persons desiring to engage in business in that jurisdiction for the purposes of selling tangible personal property under this part and shall transmit that information to the board. The information shall be provided to the board in a format to be determined by the board after consulting with the League of California Cities and the California State Association of Counties.

(b) The information submitted to the board under subdivision (a) shall serve as all of the following:

(1) The preliminary application for a seller's permit.

(2) Notification to the board by the city, county, or city and county of a person desiring to engage in the business of selling of tangible personal property in that jurisdiction.

(3) Notice to the board for purposes of redistribution under Section 7209.

(c) The board shall issue a determination regarding issuance of a seller's permit and receipt of notification for purposes of paragraphs (2) and (3) of subdivision (b). The board shall provide a copy of that determination and receipt of notification to the city, county, or city and county from which the board has received information under subdivision (a). The board shall make its determination as follows:

(1) For persons for whom a determination can be made based on the information submitted, the determination shall be issued within 30 days of receipt of the information.

(2) For persons for whom additional information is required before a determination can be made, the determination shall be issued within 120 days of receipt of the information.

(d) The board shall, after consulting with the League of California Cities and the California State Association of Counties, adopt standardized data addressing and naming conventions that are compatible with local jurisdiction conventions for new registrants and, to the extent possible, for current accounts.

(e) A city, county, or city and county may not charge applicants a fee for collecting and transmitting information pursuant to this section.

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

SEC. 2. Section 6066.4 is added to the Revenue and Taxation Code, to read:

6066.4. (a) A city, county, or city and county may require each person desiring to engage in business in that jurisdiction for the purposes of selling tangible personal property to provide his or her seller's permit account number, if any.

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

SEC. 3. On or before January 1, 2003, the State Board of Equalization shall report to the Legislature regarding this act. The report shall include the amount of sales and use tax revenues collected from persons not previously registered by the board and the board's cost to administer the provisions of this act.

CHAPTER 909

An act to add Sections 328.1, 328.2, and 374.5 to, and to repeal and add Section 328 of, the Public Utilities Code, relating to public utilities.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 328 of the Public Utilities Code is repealed.

SEC. 2. Section 328 is added to the Public Utilities Code, to read:

328. The Legislature finds and declares both of the following:

(a) In order to ensure that all core customers of a gas corporation continue to receive safe basic gas service in a competitive market, each existing gas corporation should continue to provide this essential service.

(b) No customer should have to pay separate fees for utilizing services that protect public or customer safety.

SEC. 3. Section 328.1 is added to the Public Utilities Code, to read:

328.1. As used in this chapter, the following terms have the following meanings:

(a) "Basic gas service" includes transmission, storage for reliability of service, and distribution of natural gas, purchasing natural gas on behalf of a customer, revenue cycle services, and after-meter services.

(b) "Revenue cycle services" means metering services, billing the customer, collection, and related customer services.

(c) "After-meter services" includes, but is not limited to, leak investigation, inspecting customer piping and appliances, carbon monoxide investigation, pilot relighting, and high bill investigation.

(d) "Metering services" includes, but is not limited to, gas meter installation, meter maintenance, meter testing, collecting and processing consumption data, and all related services associated with the meter.

SEC. 4. Section 328.2 is added to the Public Utilities Code, to read:

328.2. The commission shall require each gas corporation to provide bundled basic gas service to all core customers in its service territory unless the customer chooses or contracts to have natural gas purchased and supplied by another entity. A public utility gas corporation shall continue to be the exclusive provider of revenue cycle services to all customers in its service territory, except that an entity purchasing and supplying natural gas under the commission's existing core aggregation program may perform billing and collection services for its customers under the same terms as currently authorized by the commission, and except that a supplier of natural gas to noncore customers may perform billing and collection for natural gas supply for its customers. The gas corporation shall continue to calculate its charges for services provided by that corporation. If the commission establishes credits to be provided by the gas corporation to core aggregation or noncore customers who obtain billing or collection services from entities other than the gas corporation, the credit shall be equal to the billing and collection services costs actually avoided by the gas corporation. The commission shall require the distribution rate to continue to include after-meter services.

SEC. 5. Section 374.5 is added to the Public Utilities Code, to read:

374.5. Any electrical corporation serving agricultural customers that have multiple electric meters shall conduct research based on a statistically valid sample of those customers and meters to determine the typical simultaneous peak load of those customers. The results of the research shall be reported to the customers and the commission not later than July 1, 2001. The commission shall consider the research results in setting future electric distribution rates for those customers.

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 910

An act to add Section 12156 to the Public Contract Code, relating to solid waste.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 12156 is added to the Public Contract Code, to read:

12156. (a) Except as provided in subdivision (b), no state agency shall purchase any printer or duplication cartridge for which the manufacturer, wholesaler, distributor, retailer, or remanufacturer places restrictions on the recycling or remanufacturing of that cartridge by any other person. For purposes of this section, these restrictions include, but are not limited to, all of the following:

(1) Reducing the price of the cartridge in exchange for any agreement not to remanufacture the cartridge.

(2) A licensing agreement on the cartridge that forbids remanufacturing.

(3) Any contract that forbids the remanufacturing or recycling of the cartridge.

(b) Notwithstanding subdivision (a), a manufacturer, wholesaler, distributor, retailer, or remanufacturer who establishes a recycling or remanufacturing program that is available to its customers may enter into signed agreements with those customers consenting to the return of the used cartridge to the manufacturer, wholesaler, distributor, retailer, or remanufacturer, only for either of the following purposes:

(1) Recycling and remanufacturing, for purposes of making the remanufactured cartridge available for purchase.

(2) Recycling.

(c) Each state agency shall print a statement on the cover of its printer or duplicator cartridge bid packages, or in some other noticeable place in the bid packet, notifying all bidders that it is unlawful to prohibit a printer or duplication cartridge that is sold to the state from being recycled or remanufactured, except as specified in subdivision (b).

(d) This section does not authorize any violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code) or the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code).

(e) As used in this section, the following terms mean:

(1) "Printer or duplication cartridge" means a cartridge, including, but not limited to, a toner or ink cartridge, used in printer or duplication equipment for business or personal use.

(2) "Recycled" means a printer or duplication cartridge that would otherwise become solid waste, but which has undergone a process of collecting, sorting, cleansing, treating, or reconstituting, and which has been returned for the manufacture of new products or the remanufacture of used cartridges.

(3) "Remanufactured" means a printer or duplication cartridge that has served its intended end use, but, rather than being discarded

or disposed of, has instead been restored, renovated, repaired, or recharged, without substantial alteration of its form.

CHAPTER 911

An act to add Section 10781.1 to the Revenue and Taxation Code, and to add Section 9104.5 to, and to add and repeal Section 35401.7 of, the Vehicle Code, relating to vehicles.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 10781.1 is added to the Revenue and Taxation Code, to read:

10781.1. The license fee imposed by this part does not apply to any vehicle that is owned by a federally recognized Indian tribe, if the vehicle is used exclusively within the boundaries of lands under the jurisdiction of that Indian tribe, including the incidental use of that vehicle on highways within those boundaries.

SEC. 2. Section 9104.5 is added to the Vehicle Code, to read:

9104.5. The fees specified in this code, except fees for registration under Section 9250, need not be paid for any vehicle of a type subject to registration under this code if the vehicle is owned by a federally recognized Indian tribe and the vehicle is used exclusively within the boundaries of lands under the jurisdiction of that Indian tribe, including the incidental use of that vehicle on highways within those boundaries.

SEC. 3. Section 35401.7 is added to the Vehicle Code, to read:

35401.7. (a) The limitations of access specified in subdivision (d) of Section 35401.5 do not apply to licensed carriers of livestock when those carriers are directly enroute to or from a point of loading or unloading of livestock on those portions of State Highway Route 101 located in the Counties of Del Norte, Humboldt, and Mendocino from its junction with State Highway Route 1 near Leggett north to the Oregon border, if the travel is necessary and incidental to the shipment of the livestock.

(b) The exemption allowed under this section does not apply unless all of the following conditions are met:

(1) The length of the truck tractor, in combination with the semitrailer used to transport the livestock, does not exceed a total of 70 feet.

(2) The distance from the kingpin to the rearmost axle of the semitrailer does not exceed 40 feet.

(c) The exemption allowed under this section does not apply to travel conducted on the day prior to, or on the day of, any federally recognized holiday.

(d) The Department of the California Highway Patrol, in consultation with the Department of Transportation, shall conduct a study of the effect that the exemption provided under this section has on public safety. Notwithstanding Section 7550.5 of the Government Code, the findings of the study shall be reported to the Legislature on or before July 1, 2001.

(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.

CHAPTER 912

An act relating to state employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. The Legislature finds and declares that the purpose of this act is to approve agreements pursuant to Section 3517 of the Government Code entered into by the state employer and recognized employee organizations.

SEC. 2. 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, and that require the expenditure of funds or legislative action to permit their implementation, are hereby approved for the purposes of Section 3517.6 of the Government Code:

(a) Unit 14 (printing trades)—California State Employees Association.

(b) Unit 15 (custodial and services)—California State Employees Association.

SEC. 3. Provisions of any memorandum of understanding approved by any section of this act that are scheduled to take effect on or after July 1, 1999, and that require the expenditure of funds shall not take effect unless funds for these provisions are specifically appropriated by the Legislature. In the event that funds for these provisions are not specifically appropriated by the Legislature, the state employer and the affected employee organization shall meet and confer to renegotiate the affected provisions.

SEC. 4. 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. 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 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 913

An act to add Sections 12922 and 12926.2 to the Government Code, relating to discrimination.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 12922 is added to the Government Code, to read:

12922. Notwithstanding any other provision of this part, an employer that is a religious corporation may restrict eligibility for employment in any position involving the performance of religious duties to adherents of the religion for which the corporation is organized.

SEC. 2. Section 12926.2 is added to the Government Code, to read:

12926.2. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Religious corporation" means any corporation formed under, or otherwise subject to, Part 4 (commencing with Section 9110) or Part 6 (commencing with Section 10000) of Division 2 of Title 1 of the Corporations Code, and also includes a corporation that is formed primarily or exclusively for religious purposes under the laws of any other state to administer the affairs of an organized religious group and that is not organized for private profit.

(b) "Religious duties" means duties of employment connected with carrying on the religious activities of a religious corporation or association.

(c) Notwithstanding subdivision (d) of Section 12926 and except as otherwise provided in paragraph (1) or (2), "employer" includes a religious corporation or association with respect to persons employed by the religious association or corporation to perform duties, other than religious duties, at a health care facility operated by the religious association or corporation for the provision of health care that is not restricted to adherents of the religion that established the association or corporation.

(1) "Employer" does not include a religious corporation with respect to either the employment, including promotion, of an individual of a particular religion, or the application of the employer's religious doctrines, tenets, or teachings, in any work connected with the provision of health care.

(2) "Employer" does not include a nonprofit public benefit corporation incorporated to provide health care on behalf of a religious organization under Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, with respect to employment, including promotion, of an individual of a particular religion in an executive or pastoral-care position connected with the provision of health care.

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

CHAPTER 914

An act to amend Sections 2725.1, 4061, 4076, 4170, and 4175 of the Business and Professions Code, relating to health practitioners.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 2725.1 of the Business and Professions Code is amended to read:

2725.1. Notwithstanding any other provision of law, a registered nurse may dispense drugs or devices upon an order by a licensed physician and surgeon when the nurse is functioning within a licensed clinic as defined in paragraphs (1) and (2) of subdivision (a) of Section 1204 of, or within a clinic as defined in subdivision (b) or (c) of Section 1206, of the Health and Safety Code.

No clinic shall employ a registered nurse to perform dispensing duties exclusively. No registered nurse shall dispense drugs in a pharmacy, keep a pharmacy, open shop, or drugstore for the retailing of drugs or poisons. No registered nurse shall compound drugs. Dispensing of drugs by a registered nurse, except a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, shall not include substances included in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code). Nothing in this section shall exempt a clinic from the provisions of Article 3.5 (commencing with Section 4063) of Chapter 9.

SEC. 2. Section 4061 of the Business and Professions Code is amended to read:

4061. No manufacturer's sales representative shall distribute any dangerous drug or dangerous device as a complimentary sample without the written request of a physician, dentist, podiatrist, or veterinarian. However, a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, or physician assistant who functions pursuant to Section 3502.1 may sign for the delivery or receipt of complimentary samples of a dangerous drug or dangerous device that has been requested in writing by his or her supervising physician. Each written request shall contain the names and addresses of the supplier and the requester, the name and quantity of the specific dangerous drug desired, the name of the nurse practitioner or physician assistant, if applicable, receiving the samples pursuant to this section, the date of receipt, and the name and quantity of the dangerous drugs or dangerous devices provided. These records shall be preserved by the supplier with the records required by Section 4059.

SEC. 3. Section 4076 of the Business and Professions Code is amended to read:

4076. (a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

(1) Except where the prescriber or nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, or physician assistant who functions pursuant to Section 3502.1 orders otherwise, either the manufacturer's trade name of the drug or the generic name and the name of the manufacturer. Commonly used abbreviations may be used. Preparations containing two or more active ingredients may be identified by the manufacturer's trade name or the commonly used name or the principal active ingredients.

(2) The directions for the use of the drug.

(3) The name of the patient or patients.

(4) The name of the prescriber and, if applicable, the nurse practitioner who functions pursuant to a standardized procedure

described in Section 2836.1, or protocol, or physician assistant who functions pursuant to Section 3502.1.

(5) The date of issue.

(6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.

(7) The strength of the drug or drugs dispensed.

(8) The quantity of the drug or drugs dispensed.

(9) The expiration date of the effectiveness of the drug dispensed.

(10) The condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.

(b) If a pharmacist dispenses a prescribed drug by means of a unit dose medication system, as defined by administrative regulation, for a patient in a skilled nursing, intermediate care, or other health care facility, the requirements of this section will be satisfied if the unit dose medication system contains the aforementioned information or the information is otherwise readily available at the time of drug administration.

(c) If a pharmacist dispenses a dangerous drug or device in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include on individual unit dose containers for a specific patient, the name of the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, or physician assistant who functions pursuant to Section 3502.1.

SEC. 4. Section 4170 of the Business and Professions Code is amended to read:

4170. (a) No prescriber shall dispense drugs or dangerous devices to patients in his or her office or place of practice unless all of the following conditions are met:

(1) The dangerous drugs or dangerous devices are dispensed to the prescriber's own patient and the drugs or dangerous devices are not furnished by a nurse or physician attendant.

(2) The dangerous drugs or dangerous devices are necessary in the treatment of the condition for which the prescriber is attending the patient.

(3) The prescriber does not keep a pharmacy, open shop, or drugstore, advertised or otherwise, for the retailing of dangerous drugs, dangerous devices, or poisons.

(4) The prescriber fulfills all of the labeling requirements imposed upon pharmacists by Section 4076, all of the recordkeeping requirements of this chapter, and all of the packaging requirements of good pharmaceutical practice, including the use of childproof containers.

(5) The prescriber does not use a dispensing device unless he or she personally owns the device and the contents of the device, and personally dispenses the dangerous drugs or dangerous devices to the patient packaged, labeled, and recorded in accordance with paragraph (4).

(6) The prescriber, prior to dispensing, offers to give a written prescription to the patient that the patient may elect to have filled by the prescriber or by any pharmacy.

(7) The prescriber provides the patient with written disclosure that the patient has a choice between obtaining the prescription from the dispensing prescriber or obtaining the prescription at a pharmacy of the patient's choice.

(8) A nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, or a physician assistant who functions pursuant to Section 3502.1, may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, a manufacturer as defined in this chapter, or a pharmacist.

(b) The Medical Board of California, the State Board of Optometry, the Board of Dental Examiners of California, the Osteopathic Medical Board of California, the Board of Registered Nursing, and the Physician Assistant Committee shall have authority with the California State Board of Pharmacy to ensure compliance with this section, and those boards are specifically charged with the enforcement of this chapter with respect to their respective licensees.

(c) "Prescriber," as used in this section, means a person, who holds a physician's and surgeon's certificate, a license to practice optometry, a license to practice dentistry, or a certificate to practice podiatry, and who is duly registered as such by the Medical Board of California, the State Board of Optometry, the Board of Dental Examiners of California, or the Board of Osteopathic Examiners of this state.

SEC. 5. Section 4175 of the Business and Professions Code is amended to read:

4175. (a) The California State Board of Pharmacy shall promptly forward to the appropriate licensing entity, including the Medical Board of California, the Board of Dental Examiners of California, the State Board of Optometry, the Osteopathic Medical Board of California, the Board of Registered Nursing, or the Physician Assistant Committee, all complaints received related to dangerous drugs or dangerous devices dispensed by a prescriber, nurse practitioner, or physician assistant pursuant to Section 4170.

(b) All complaints involving serious bodily injury due to dangerous drugs or dangerous devices dispensed by prescribers, nurse practitioners, or physician assistants pursuant to Section 4170 shall be handled by the Medical Board of California, the Board of Dental Examiners of California, the State Board of Optometry, the Osteopathic Medical Board of California, the Board of Registered Nursing, or the Physician Assistant Committee as a case of greatest potential harm to a patient.

CHAPTER 915

An act to amend Sections 110005, 110050, 110475, 110480, 110485, 112040, 112115, and 113355 of, to amend and renumber Sections 110780 and 110785 of, to add Sections 109947, 110466, 110467, 110472, 110473, 110474, and 110661 to, and to repeal and add Sections 110460 and 110470 of, the Health and Safety Code, relating to environmental health.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 109947 is added to the Health and Safety Code, to read:

109947. "Food processing facility" means any facility operated for the purposes of manufacturing, packing, or holding processed food. Food processing facility does not include a food facility as defined in Section 113785, or any facility exclusively storing, handling, or processing dried beans.

SEC. 2. Section 110005 of the Health and Safety Code is amended to read:

110005. "Potentially hazardous food" means any food capable of supporting growth of infectious or toxigenic micro-organisms when held at temperatures above 45 degrees Fahrenheit.

SEC. 3. Section 110050 of the Health and Safety Code is amended to read:

110050. The Food Safety Fund is hereby created as a special fund in the State Treasury. All moneys collected by the department under subdivision (c) of Section 110466 and Sections 110470 and 110485 and under Article 7 (commencing with Section 110810) of Chapter 5 shall be deposited in the fund, for use by the department, upon appropriation by the Legislature, for the purposes of providing funds necessary to carry out and implement the inspection provisions of this part relating to food, the provisions relating to education and training in the prevention of microbial contamination pursuant to Section 110485, and the registration provisions of Article 7 (commencing with Section 110810) of Chapter 5.

SEC. 4. Section 110460 of the Health and Safety Code is repealed.

SEC. 5. Section 110460 is added to the Health and Safety Code, to read:

110460. No person shall engage in the manufacture, packing, or holding of any processed food in this state unless the person has a valid registration from the department, except those engaged exclusively in the storing, handling, or processing of dried beans. The registration shall be valid for one calendar year from the date of issue, unless it is revoked. The registration shall not be transferable.

SEC. 6. Section 110780 of the Health and Safety Code is amended and renumbered to read:

110461. It is unlawful for any person to manufacture, pack, or hold processed food in this state unless in a food processing facility duly registered, as provided in this part.

SEC. 7. Section 110785 of the Health and Safety Code is amended and renumbered to read:

110462. It is unlawful for any person to willfully make a false statement or representation, or knowingly fail to disclose a fact required to be disclosed in the application for registration or renewal of registration, as provided in this article.

SEC. 8. Section 110466 is added to the Health and Safety Code, to read:

110466. (a) Commencing January 1, 2000, the department shall use the resources provided by the registration fees assessed by this article to inspect new and registered food processing facilities to determine compliance with this part. The department shall target the inspections and adjust their scope, depth, and frequency based on the department's statewide assessment of public health risk potential. In assessing public health risk potential, the department shall consider, at a minimum, the potential and actual health risks associated with processed foods manufactured, packed, or held in this state, and the food safety practices and compliance histories of persons who manufacture, pack, or hold processed foods in this state.

(b) Commencing January 1, 2001, the department, pursuant to this chapter, shall conduct an annual inspection of each registered food processing facility and inspect each new food processing facility prior to issuing a new registration pursuant to Section 110460. This annual inspection requirement may be adjusted or waived based on an assessment of the food processing facility pursuant to subdivision (a).

(c) The department may perform one or more reinspections of each new and registered food processing facility as necessary to prevent repeated or continuing violations of this part and for the purposes of approving the issuance of a new registration. The department shall not charge a separate fee for a first reinspection. The department shall charge a fee of seventy-five dollars ($75) per hour to cover the costs of performing the second and subsequent reinspections of the same food processing facility within the same registration period.

SEC. 9. Section 110467 is added to the Health and Safety Code, to read:

110467. Any violation of any provision of this part or any regulation adopted pursuant to this part shall be grounds for denying a registration or for suspending or revoking a registration. Proceedings for the denial, suspension, or revocation of a registration shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government

Code, and the department shall have all the powers granted in that chapter.

SEC. 10. Section 110470 of the Health and Safety Code is repealed.

SEC. 11. Section 110470 is added to the Health and Safety Code, to read:

110470. A registration application provided by the department shall be completed annually and accompanied by a nonreturnable registration fee.

The fee for a new or renewal registration for a food processing facility shall be as follows:

Holding Food Only:

	Fee through 12/31/99	Fee commencing 01/01/2000 through 12/31/2000	Fee commencing 01/01/2001 and ongoing	Fee commencing 01/01/2000 Los Angeles, Orange, San Bernardino Counties and the City of Vernon
Size of Facility:				
0−5,000 sq. ft.	$257.85	$300	$300	$300
5,001−10,000 sq. ft.	257.85	350	400	350
Over 10,000 sq. ft.	386.77	500	600	500

Manufacturing or Packing of Food:

		Fee through 12/31/99	Fee commencing 01/01/2000 through 12/31/2000	Fee commencing 01/01/2001 and ongoing	Fee commencing 01/01/2000 Los Angeles, Orange, San Bernardino Counties and the City of Vernon
Number of Employees	Size of Facility				
0−2		$257.85	$300	$300	$300
3−5	0−5,000 sq. ft.	257.85	350	400	350
6−20	0−5,000 sq. ft.	386.77	500	600	500
More than 20	0−5,000 sq. ft.	515.70	700	900	700

3–5	Over 5,000 sq. ft.	257.85	500	600	500
6–20	Over 5,000 sq. ft.	515.70	700	900	700
21–50	Over 5,000 sq. ft.	644.52	935	1,250	850
51–100	Over 5,000 sq. ft.	644.52	985	1,350	850
101–200	Over 5,000 sq. ft.	644.52	1,035	1,450	850
201 or more	Over 5,000 sq. ft.	644.52	1,085	1,550	850

A penalty of 1 percent per month shall be added to any registration fee not paid when due. The fee amount shall be adjusted annually pursuant to Section 100425.

SEC. 12. Section 110472 is added to the Health and Safety Code, to read:

110472. The department, in consultation with the California Conference of Directors of Environmental Health (CCDEH), representatives of the food processing industry, representatives of the local health departments of, Los Angeles, Orange, and San Bernardino Counties, and the City of Vernon, and any other person or entity deemed appropriate by the department shall develop, implement, and evaluate the processed food program in accordance with this chapter. In developing the processed food program, consideration shall be given to all aspects of the program provided for in this chapter.

SEC. 13. Section 110473 is added to the Health and Safety Code, to read:

110473. Notwithstanding the requirements of Section 110470, any person who is required to be registered under this chapter and is operating the food processing facility exclusively for charitable purposes, and meets the requirements of Section 214 of the Revenue and Taxation Code, shall not be required to submit any fees required by Section 110470.

SEC. 14. Section 110474 is added to the Health and Safety Code, to read:

110474. Nothing in this chapter shall relieve a person who has a valid registration to manufacture, pack, or hold processed food issued by the department from any other requirements for licensure, registration, or certification under Article 7 (commencing with Section 110810), Article 12 (commencing with Section 111070), or Part 6 (commencing with Section 111940). The registration fee due to the department under this article from a person who holds one or more licenses, registrations, or certificates issued by the department pursuant to Article 12 (commencing with Section 111070) or Chapters 5 to 10, inclusive of Part 6 (commencing with Section 112150) shall be the fee for the single highest cost license, registration, or certificate only. Cannery inspection fees collected pursuant to Section 112730 and organic processed food registration fees collected pursuant to Section 110875 shall be in addition to any registration fees that may be collected under this article.

SEC. 15. Section 110475 of the Health and Safety Code is amended to read:

110475. Any person registered pursuant to this article shall immediately notify the department of any change in the information reported on the registration application.

SEC. 16. Section 110480 of the Health and Safety Code is amended to read:

110480. The registration provisions of this article shall not apply to any person whose manufacturing, packing, or holding of processed food is limited solely to temporarily holding processed foods for up to seven days for further transport if the foods are not potentially hazardous foods, as defined in Section 110005, or to any person whose manufacturing, packing, or holding of processed food is limited solely to activities authorized by any of the following:

(a) A valid bottled water or water vending machine license issued pursuant to Article 12 (commencing with Section 111070).

(b) A valid pet food license issued pursuant to Chapter 10 (commencing with Section 113025) of Part 6.

(c) A valid permit issued pursuant to Chapter 4 (commencing with Section 113700) of Part 7 to a food facility including a food facility that manufactures, packs, or holds processed food for sale at wholesale, provided the food facility that manufactures, packs, or holds processed food for sale at wholesale does not meet any of the following conditions:

(1) Has gross annual wholesale sales of processed foods of more than 25 percent of total food sales.

(2) Sells processed foods outside the jurisdiction of the local health department.

(3) Sells processed foods that require labeling pursuant to this part.

(4) Processes or handles fresh seafood, frozen seafood held in bulk for further processing, or fresh or frozen raw shellfish.

(5) Salvages processed foods for sale other than at the retail food facility.

(d) A valid cold storage license issued pursuant to Chapter 6 (commencing with Section 112350) of Part 6.

(e) A valid cannery license issued pursuant to Chapter 8 (commencing with Section 112650) of Part 6.

(f) A valid shellfish certificate issued pursuant to Chapter 5 (commencing with Section 112150) of Part 6.

(g) A valid frozen food locker plant license issued pursuant to Chapter 7 (commencing with Section 112500) of Part 6.

(h) A valid winegrower's license or wine blender's license pursuant to Division 9 (commencing with Section 23000) of the Business and Professions Code.

(i) A valid milk products plant, margarine, imitation ice cream, imitation ice milk, or a products resembling milk products plant

license, issued pursuant to Division 15 (commencing with Section 32501) of the Food and Agricultural Code.

(j) A valid permit issued by a local health department to operate a processing establishment, as defined in Section 111955, that only holds or warehouses processed food, pursuant to Article 1 (commencing with Section 111950) of Chapter 4 of Part 6, provided that all of the following conditions are met:

(1) The warehouse does not manufacture or pack processed food.

(2) The warehouse does not hold fresh seafood, frozen seafood held in bulk for further processing, or fresh or frozen raw shellfish.

(3) The warehouse is not operated as an integral part of a food processing facility required to be registered pursuant to Section 110460.

(4) The warehouse facilities are located entirely within the area under the jurisdiction of the local health department.

(5) The warehouse does not salvage food as the primary business.

(k) This section shall not be construed to limit the authority of Los Angeles, San Bernardino, and Orange Counties, or of the City of Vernon, to conduct any inspections otherwise authorized by Chapter 4 (commencing with Section 111950) of Part 6.

SEC. 17. Section 110485 of the Health and Safety Code is amended to read:

110485. (a) Every person who is engaged in the manufacture, packing, or holding of processed food in this state shall pay a food safety fee of one hundred dollars ($100) to the department in addition to any fees paid pursuant to Section 110470.

(b) Revenue received pursuant to this section shall be deposited in the Food Safety Fund created pursuant to Section 110050. A penalty of 10 percent per month shall be added to any food safety fee not paid when due.

(c) Upon appropriation, the food safety fees deposited in the Food Safety Fund shall be used by the department to assist in developing and implementing education and training programs related to food safety. These programs shall be developed in consultation with representatives of the food processing industry. Implementation shall include education and training in the prevention of microbial contamination.

(d) This section does not apply to companies exclusively involved in flour milling, dried bean processing, or in the drying or milling of rice, or to those individual registrants the director determines should not be assessed because substantial economic hardship would result to those registrants. For the purposes of this subdivision, the substantial hardship exemption shall be extended only to registrants whose wholesale gross annual income from the registered business is twenty thousand dollars ($20,000) or less.

(e) This section shall remain in effect only until January 1, 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. 18. Section 110661 is added to the Health and Safety Code, to read:

110661. Any food is misbranded if it is manufactured, packed, or held in this state in a food processing facility not duly registered as provided in this part, except for food from facilities exclusively storing, handling, or processing dry beans.

SEC. 19. Section 112040 of the Health and Safety Code is amended to read:

112040. (a) Prior to January 1, 2001, the department, its inspectors and agents, and all local health officers and inspectors may at all times enter any building, room, basement, cellar, or other place occupied or used, or suspected of being occupied or used, for the production, preparation, manufacture, storage, sale, or distribution of food, and inspect the premises and all utensils, implements, receptacles, fixtures, furniture, and machinery used.

(b) Commencing January 1, 2001, only the department, its inspectors and agents, and the local health officers and inspectors of Los Angeles, San Bernardino, and Orange Counties and the City of Vernon may exercise the authority to enter and inspect granted in subdivision (a) except as provided in subdivision (c).

(c) Commencing January 1, 2001, the local health officer or inspector of each city or county, or city and county may exercise the authority to enter and inspect granted in subdivision (a) for the sole purpose of inspecting a food processing establishment that only holds warehouses processed food, provided that:

(1) The warehouse does not manufacture or pack processed food.

(2) The warehouse does not hold fresh seafood, frozen seafood held in bulk for further processing, or fresh or frozen raw shellfish.

(3) The warehouse is not operated as an integral part of a food processing facility required to be registered pursuant to Section 110460.

(4) The warehouse facilities are located entirely within the area under the jurisdiction of the local health department.

(5) The warehouse does not salvage food as the primary business.

(d) All inspections of food processing establishments conducted by local health departments shall be reported to the department within 60 days. The department shall consider this information when scheduling the department's inspection activities.

SEC. 20. Section 112115 of the Health and Safety Code is amended to read:

112115. This article, with the exception of any licensing provisions, may be enforced by any local enforcement division, which shall be construed to mean the local health department, headed by the duly appointed, qualified and acting health officer of any county, city or city and county. The territory may include one or more counties, cities, or cities and counties.

SEC. 21. Section 113355 of the Health and Safety Code is amended to read:

113355. (a) The primary responsibility for enforcement of this article shall be vested in the local health officers; county agricultural commissioners may participate in enforcement. The State Departments of Health Services, Industrial Relations, and Food and Agriculture may also enforce this article.

(b) Any agency enforcing this article shall report any violation to all field offices of the Employment Development Department located in the county where the violation occurs. The report shall identify the employer responsible for the violation, the nature of the violation, and the location of the food crop growing and harvesting operation where the violation occurs. The Employment Development Department shall not refer persons for employment to any employer or food crop growing and harvesting operation identified in the report until the agency reporting the violation certifies that the violation has been corrected.

SEC. 22. 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 916

An act to amend Section 66903 of the Education Code, relating to postsecondary education, and making an appropriation therefor.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 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 Governor has called for increased accountability along the entire educational continuum, starting with kindergarten and continuing through the university level.

(b) The demand for postsecondary education in California is expected to increase by up to 500,000 students over the next 10 years.

(c) Both the numbers of high school graduates and the percentage of those graduates who prepare for college are expected to increase.

(d) The state currently does not have the capability to carry out longitudinal monitoring or analysis of the enrollment patterns of individual students as they progress through their postsecondary education.

(e) A student information system that ensures longitudinal analysis would provide for increased accountability by providing more accurate, timely, and comprehensive data on college and university student performance in the areas of transfer, degree completion, and retention.

(f) The report, Diversity in Higher Education, issued by the Center for California Studies in November 1998, recommends that a systematic collection and analysis of longitudinal data on student enrollment and attendance be undertaken in order to assess student diversity at California's public institutions of higher education.

SEC. 2. Section 66903 of the Education Code is amended to read:

66903. The commission shall have the following functions and responsibilities in its capacity as the statewide postsecondary education planning and coordinating agency and adviser to the Legislature and the Governor:

(a) It shall require the governing boards of the segments of public postsecondary education to develop and submit to the commission institutional and systemwide long-range plans in a form determined by the commission after consultation with the segments.

(b) It shall prepare a state plan for postsecondary education that shall integrate the planning efforts of the public segments with other pertinent plans. The commission shall seek to resolve conflicts or inconsistencies among segmental plans in consultation with the segments. If these consultations are unsuccessful, the commission shall report the unresolved issues to the Legislature with recommendations for resolution. In developing the plan, the commission shall consider at least the following factors:

(1) The need for, and location of, new facilities.

(2) The range and kinds of programs appropriate to each institution or system.

(3) The budgetary priorities of the institutions and systems of postsecondary education.

(4) The impact of various types and levels of student charges on students and on postsecondary education programs and institutions.

(5) The appropriate levels of state-funded student financial aid.

(6) The access and admission of students to postsecondary education.

(7) The educational programs and resources of independent and private postsecondary institutions.

(8) The provisions of this division differentiating the functions of the public systems of higher education.

(c) It shall update the plan periodically, as appropriate.

(d) It shall participate in appropriate stages of the executive and the legislative budget processes as requested by the executive and the legislative branches, and shall advise the executive and the legislative branches as to whether segmental programmatic budgetary requests are compatible with the state plan. It is not intended that the commission hold independent budget hearings.

(e) It shall advise the Legislature and the Governor regarding the need for, and location of, new institutions and campuses of public higher education.

(f) It shall review proposals by the public segments for new programs, the priorities that guide them, the degree of coordination with nearby public, independent, and private postsecondary educational institutions, and shall make recommendations regarding those proposals to the Legislature and the Governor.

(g) In consultation with the public segments, it shall establish a schedule for segmental review of selected educational programs, evaluate the program approval, review, and disestablishment processes of the segments, and report its findings and recommendations to the Legislature and the Governor.

(h) It shall serve as a stimulus to the segments and institutions of postsecondary education by projecting and identifying societal and educational needs and encouraging adaptability to change.

(i) It shall periodically collect or conduct, or both collect and conduct, studies of projected manpower supply and demand, in cooperation with appropriate state agencies, and disseminate the results of those studies to institutions of postsecondary education and to the public in order to improve the information base upon which student choices are made.

(j) It shall periodically review and make recommendations concerning the need for, and availability of, postsecondary programs for adult and continuing education.

(k) It shall develop criteria for evaluating the effectiveness of all aspects of postsecondary education.

(*l*) It shall maintain and update annually an inventory of all off-campus programs and facilities for education, research, and community services operated by public and independent institutions of postsecondary education.

(m) (1) It shall act as a clearinghouse for postsecondary education information and as a primary source of information for the Legislature, the Governor, and other agencies. It shall develop and maintain a comprehensive data base that does all of the following:

(A) Ensures comparability of data from diverse sources.

(B) Supports longitudinal studies of individual students as they progress through the state's postsecondary educational institutions, based upon the commission's existing student data base through the use of a unique student identifier.

(C) Is compatible with the California School Information System and the student information systems developed and maintained by the public segments of higher education, as appropriate.

(D) Provides Internet access to data, as appropriate, to the sectors of higher education.

(E) Provides each of the educational segments access to the data made available to the commission for the purposes of the data base, in order to support, most efficiently and effectively, statewide,

segmental, and individual campus educational research information needs.

(2) The commission, in implementing paragraph (1), shall comply with the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) relating to the disclosure of personally identifiable information concerning students.

(3) The commission shall not make available any personally identifiable information received from a postsecondary educational institution concerning students for any regulatory purpose unless the institution has authorized the commission to provide that information on behalf of the institution.

(4) The commission shall provide 30-day notification to the chairpersons of the appropriate legislative policy and budget committees of the Legislature, to the Director of Finance, and to the Governor prior to making any significant changes to the student information contained in the data base.

(n) It shall establish criteria for state support of new and existing programs, in consultation with the public segments, the Department of Finance, and the Joint Legislative Budget Committee.

(o) It shall comply with the appropriate provisions of the federal Education Amendments of 1972 (P.L. 92-318), as specified in Section 67000.

(p) It shall consider the relationship among academic education and vocational education and job training programs, and shall actively consult with representatives of public and private education.

(q) It shall review all proposals for changes in eligibility pools for admission to public institutions and segments of postsecondary education and shall make recommendations to the Legislature, the Governor, and institutions of postsecondary education.

(r) It shall report periodically to the Legislature and the Governor regarding the financial conditions of independent institutions, their enrollment and application figures, the number of student spaces available, and the respective cost of utilizing those spaces as compared to providing additional public spaces. The reports shall include recommendations concerning state policies and programs having a significant impact on independent institutions.

(s) Upon request of the Legislature or the Governor, it shall submit to the Legislature and the Governor a report on all matters so requested that are compatible with its role as the statewide postsecondary education planning and coordinating agency. Upon request of individual Members of the Legislature or personnel in the executive branch, the commission shall submit information or a report on any matter to the extent that sufficient resources are available. From time to time, it also may submit to the Legislature and the Governor a report that contains recommendations as to necessary or desirable changes, if any, in the functions, policies, and programs of the several segments of public, independent, and private postsecondary education.

(t) It may undertake other functions and responsibilities that are compatible with its role as the statewide postsecondary education planning and coordinating agency.

SEC. 3. The sum of four hundred twenty-four thousand dollars ($424,000) is hereby appropriated from the General Fund to the California Postsecondary Education Commission for purposes of the development and maintenance of a comprehensive data base, as set forth in subdivision (m) of Section 66903 of the Education Code. The expenditure of these funds shall be contingent upon review and approval of a feasibility study report by the Department of Information Technology and the Department of Finance.

CHAPTER 917

An act to add Section 16404.5 to the Government Code, and to amend Section 830.2 of the Penal Code, relating to corrections.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 16404.5 is added to the Government Code, to read:

16404.5. Notwithstanding Section 16404, the Department of Corrections may withdraw funds for confidential use in an amount not to exceed ten thousand dollars ($10,000) per fiscal year. The sums so withdrawn may be used as a revolving fund where cash advances are necessary. At the close of each fiscal year, the department shall account for and substantiate to the Controller the amount of moneys so withdrawn during that fiscal year with vouchers and itemized statements, exclusive of names and locations, along with a certificate of the purpose and necessity for secrecy. The Controller is authorized to perform audits of these vouchers and itemized statements as may be necessary.

SEC. 2. Section 830.2 of the Penal Code is amended to read:

830.2. The following persons are peace officers whose authority extends to any place in the state:

(a) Any member of the Department of the California Highway Patrol including those members designated under subdivision (a) of Section 2250.1 of the Vehicle Code, provided that the primary duty of the peace officer is the enforcement of any law relating to the use or operation of vehicles upon the highways, or laws pertaining to the provision of police services for the protection of state officers, state properties, and the occupants of state properties, or both, as set forth in the Vehicle Code and Government Code.

(b) A member of the University of California Police Department appointed pursuant to Section 92600 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 92600 of the Education Code.

(c) A member of the California State University Police Departments appointed pursuant to Section 89560 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 89560 of the Education Code.

(d) (1) Any member of the Law Enforcement and Investigations Unit of the Department of Corrections, provided that the primary duties of the peace officer shall be the investigation or apprehension of parolees, parole violators, or escapees from state institutions, the transportation of those persons, and the coordination of those activities with other criminal justice agencies.

(2) Any member of the Office of Internal Affairs of the Department of Corrections, provided that the primary duties shall be criminal investigations of Department of Corrections personnel and the coordination of those activities with other criminal justice agencies. For purposes of this subdivision the member of the Office of Internal Affairs shall possess certification from the Commission on Peace Officer Standards and Training for investigators, or have completed training pursuant to Section 6126.1 of the Penal Code.

(e) Employees of the Department of Fish and Game designated by the director, provided that the primary duty of those peace officers shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code.

(f) Employees of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as set forth in Section 5008 of the Public Resources Code.

(g) The Director of Forestry and Fire Protection and employees or classes of employees of the Department of Forestry and Fire Protection designated by the director pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code.

(h) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of any of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(i) Marshals and police appointed by the Board of Directors of the California Exposition and State Fair pursuant to Section 3332 of the

Food and Agricultural Code, provided that the primary duty of the peace officers shall be the enforcement of the law as prescribed in that section.

CHAPTER 918

An act to amend Sections 3513, 11552, and 19815 of the Government Code, and to amend Sections 830.2, 6051, 6126, and 6128 of, and to add Sections 6126.3, 6126.4, 6126.5, 6126.6, 6127.1, 6127.3, and 6127.4 to, and to repeal Section 6127 of, the Penal Code, relating to the office of the Inspector General, and making an appropriation therefor.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 3513 of the Government Code is amended to read:

3513. As used in this chapter:

(a) "Employee organization" means any organization which includes employees of the state and which has as one of its primary purposes representing these employees in their relations with the state.

(b) "Recognized employee organization" means an employee organization which has been recognized by the state as the exclusive representative of the employees in an appropriate unit.

(c) "State employee" means any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the State Department of Education or the Superintendent of Public Instruction, except managerial employees, confidential employees, supervisory employees, employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the office of the Inspector General, employees of the board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, and intermittent athletic inspectors who are employees of the State Athletic Commission.

(d) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public

agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(e) "Managerial employee" means any employee having significant responsibilities for formulating or administering agency or departmental policies and programs or administering an agency or department.

(f) "Confidential employee" means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information contributing significantly to the development of management positions.

(g) "Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend this action, if, in connection with the foregoing, the exercise of this authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

(h) "Board" means the Public Employment Relations Board. The Educational Employment Relations Board established pursuant to Section 3541 shall be renamed the Public Employment Relations Board as provided in Section 3540. The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter.

(i) "Maintenance of membership" means that all employees who voluntarily are, or who voluntarily become, members of a recognized employee organization shall remain members of that employee organization in good standing for a period as agreed to by the parties pursuant to a memorandum of understanding, commencing with the effective date of the memorandum of understanding. A maintenance of membership provision shall not apply to any employee who within 30 days prior to the expiration of the memorandum of understanding withdraws from the employee organization by sending a signed withdrawal letter to the employee organization and a copy to the Controller's office.

(j) "State employer," or "employer," for the purposes of bargaining or meeting and conferring in good faith, means the Governor or his or her designated representatives.

(k) "Fair share fee" means the fee deducted by the state employer from the salary or wages of a state employee in an appropriate unit who does not become a member of and financially support the recognized employee organization. The fair share fee shall be used to defray the costs incurred by the recognized employee organization in fulfilling its duty to represent the employees in their

employment relations with the state, and shall not exceed the standard initiation fee, membership dues, and general assessments of the recognized employee organization.

SEC. 2. 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) Secretary of the Trade and Commerce Agency.
(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) The Inspector General pursuant to Section 6125 of the Penal Code.

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. 3. Section 19815 of the Government Code is amended to read:

19815. As used in this part:

(a) "Department" means the Department of Personnel Administration.

(b) "Director" means the Director of the Department of Personnel Administration.

(c) "Division" means the Division of Labor Relations.

(d) "Employee" or "state employee," except where otherwise indicated, means employees subject to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1), supervisory employees as defined in subdivision (g) of Section 3513, managerial employees as defined in subdivision (e) of Section 3513, confidential employees as defined in subdivision (f) of Section 3513, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the office of the Inspector General, employees of the Public Employment Relations Board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than audit staff, intermittent athletic inspectors who are employees of the State Athletic Commission, professional employees in the Personnel/Payroll Services Division of the Controller's office and all employees of the executive branch of government who are not elected to office.

SEC. 4. Section 830.2 of the Penal Code is amended to read:

830.2. The following persons are peace officers whose authority extends to any place in the state:

(a) Any member of the Department of the California Highway Patrol including those members designated under subdivision (a) of Section 2250.1 of the Vehicle Code, provided that the primary duty of the peace officer is the enforcement of any law relating to the use or operation of vehicles upon the highways, or laws pertaining to the provision of police services for the protection of state officers, state properties, and the occupants of state properties, or both, as set forth in the Vehicle Code and Government Code.

(b) A member of the University of California Police Department appointed pursuant to Section 92600 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 92600 of the Education Code.

(c) A member of the California State University Police Departments appointed pursuant to Section 89560 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 89560 of the Education Code.

(d) Any member of the Law Enforcement Liaison Unit of the Department of Corrections, provided that the primary duty of the peace officer shall be the investigation or apprehension of parolees, parole violators, or escapees from state institutions, the transportation of those persons, and the coordination of those activities with other criminal justice agencies.

(e) Employees of the Department of Fish and Game designated by the director, provided that the primary duty of those peace officers shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code.

(f) Employees of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as set forth in Section 5008 of the Public Resources Code.

(g) The Director of Forestry and Fire Protection and employees or classes of employees of the Department of Forestry and Fire Protection designated by the director pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code.

(h) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of any of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(i) Marshals and police appointed by the Board of Directors of the California Exposition and State Fair pursuant to Section 3332 of the Food and Agricultural Code, provided that the primary duty of the peace officers shall be the enforcement of the law as prescribed in that section.

(j) The Inspector General, pursuant to Section 6125, and the Chief Deputy Inspector General In Charge, the Senior Deputy Inspector General, the Deputy Inspector General, and those employees of the Inspector General as designated by the Inspector General, are peace officers, provided that the primary duty of these peace officers shall be conducting audits of investigatory practices and other audits, as well as conducting investigations, of the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board, or the Board of Corrections.

SEC. 4.5. Section 830.2 of the Penal Code is amended to read:

830.2. The following persons are peace officers whose authority extends to any place in the state:

(a) Any member of the Department of the California Highway Patrol including those members designated under subdivision (a) of Section 2250.1 of the Vehicle Code, provided that the primary duty

of the peace officer is the enforcement of any law relating to the use or operation of vehicles upon the highways, or laws pertaining to the provision of police services for the protection of state officers, state properties, and the occupants of state properties, or both, as set forth in the Vehicle Code and Government Code.

(b) A member of the University of California Police Department appointed pursuant to Section 92600 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 92600 of the Education Code.

(c) A member of the California State University Police Departments appointed pursuant to Section 89560 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 89560 of the Education Code.

(d) (1) Any member of the Law Enforcement and Investigations Unit of the Department of Corrections, provided that the primary duties of the peace officer shall be the investigation or apprehension of parolees, parole violators, or escapees from state institutions, the transportation of those persons, and the coordination of those activities with other criminal justice agencies.

(2) Any member of the Office of Internal Affairs of the Department of Corrections, provided that the primary duties shall be criminal investigations of Department of Corrections personnel and the coordination of those activities with other criminal justice agencies. For purposes of this subdivision the member of the Office of Internal Affairs shall possess certification from the Commission on Peace Officer Standards and Training for investigators, or have completed training pursuant to Section 6126.1 of the Penal Code.

(e) Employees of the Department of Fish and Game designated by the director, provided that the primary duty of those peace officers shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code.

(f) Employees of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as set forth in Section 5008 of the Public Resources Code.

(g) The Director of Forestry and Fire Protection and employees or classes of employees of the Department of Forestry and Fire Protection designated by the director pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code.

(h) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary

duty of any of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(i) Marshals and police appointed by the Board of Directors of the California Exposition and State Fair pursuant to Section 3332 of the Food and Agricultural Code, provided that the primary duty of the peace officers shall be the enforcement of the law as prescribed in that section.

(j) The Inspector General, pursuant to Section 6125, and the Chief Deputy Inspector General In Charge, the Senior Deputy Inspector General, the Deputy Inspector General, and those employees of the Inspector General as designated by the Inspector General, are peace officers, provided that the primary duty of these peace officers shall be conducting audits of investigatory practices and other audits, as well as conducting investigations, of the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board, or the Board of Corrections.

SEC. 5. Section 6051 of the Penal Code is amended to read:

6051. The Inspector General shall conduct a management review audit of any warden in the Department of Corrections or superintendent in the Department of the Youth Authority who has held his or her position for more than four years. The Inspector General shall conduct a management review audit following the confirmation of a new warden or the appointment of a new superintendent unless the Inspector General determines that the audit is not warranted at that time. The management review audit shall include, but not be limited to, issues relating to personnel, training, investigations, and financial matters. The audit report shall be submitted to the secretary of the agency, and the respective director for evaluation and for any response deemed necessary. Any Member of the Legislature may request and shall be provided with a copy of any audit report. A report that involves potential criminal investigations or prosecution shall be considered confidential.

SEC. 6. Section 6126 of the Penal Code is amended to read:

6126. (a) The Inspector General shall be responsible for reviewing departmental policy and procedures for conducting audits of investigatory practices and other audits, as well as conducting investigations of the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board, the Board of Corrections, the Narcotic Addict Evaluation Authority, the Prison Industry Authority, and the Youth and Adult Correctional Agency, as requested by either the Secretary of the Youth and Adult Correctional Agency or a Member of the Legislature, pursuant to the approval of the Inspector General under policies to be developed by the Inspector General. The Inspector General may, under policies developed by the Inspector General, initiate an investigation or an audit on his or her own accord.

(b) Upon completion of an investigation or audit, the Inspector General shall provide a response to the requester.

(c) The Inspector General shall, during the course of an investigatory audit, identify areas of full and partial compliance, or noncompliance, with departmental investigatory policies and procedures, specify deficiencies in the completion and documentation of investigatory processes, and recommend corrective actions, including, but not limited to, additional training with respect to investigative policies, additional policies, or changes in policy, as well as any other findings or recommendations that the Inspector General deems appropriate.

SEC. 7. Section 6126.3 is added to the Penal Code, to read:

6126.3. The Inspector General shall not destroy any papers or memoranda used to support a completed audit within three years after a report is released. All books, papers, records, and correspondence of the office pertaining to its work are public records subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and shall be filed at any of the regularly maintained offices of the Inspector General, except that none of the following items, or papers of which these items are a part, shall be released to the public by the Inspector General or his or her employees and shall not be subject to discovery pursuant to any provision of Title 3 (commencing with Section 1981) of Part 4 of the Code of Civil Procedure in any manner:

(a) Personal papers and correspondence of any person receiving assistance from the Inspector General when that person requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn or upon the order of the Inspector General.

(b) Papers, correspondence, memoranda, or any information pertaining to any audit or investigation not completed.

(c) Papers, correspondence, or memoranda pertaining to any audit or investigation that has been completed, if the papers, correspondence, or memoranda are not used in support of any report resulting from the audit or investigation.

SEC. 8. Section 6126.4 is added to the Penal Code, to read:

6126.4. It is a misdemeanor for the Inspector General or any employee or former employee of the Inspector General to divulge or make known in any manner not expressly permitted by law to any person not employed by the Inspector General any particulars of any record, document, or information the disclosure of which is restricted by law from release to the public. This prohibition is also applicable to any person or business entity that is contracting with or has contracted with the Inspector General and to the employees and former employees of that person or business entity or the employees of any state agency or public entity that has assisted the Inspector

General in the course of any audit or investigation or that has been furnished a draft copy of any report for comment or review.

SEC. 9. Section 6126.5 is added to the Penal Code, to read:

6126.5. (a) Notwithstanding any other provision of law, the Inspector General during regular business hours or at any other time determined necessary by the Inspector General, shall have access to and authority to examine and reproduce, any and all books, accounts, reports, vouchers, correspondence files, documents, and other records, and to examine the bank accounts, money, or other property, of any entity defined in Section 6126 for any audit or investigation. Any officer or employee of any such agency or entity having these records or property in his or her possession or under his or her control shall permit access to, and examination and reproduction thereof consistent with the provisions of this section, upon the request of the Inspector General or his or her authorized representative.

(b) For the purposes of access, examination, and reproduction as provided in subdivision (a), an authorized representative of the Inspector General is an employee or officer of the agency or public entity involved and is subject to any limitations on release of the information as may apply to an employee or officer of the agency or public entity. For the purpose of conducting any audit or investigation, the Inspector General or his or her authorized representative shall have access to the records and property of any public or private entity or person subject to review or regulation by the public agency or public entity being audited or investigated to the same extent that employees or officers of that agency or public entity have access. No provision of law providing for the confidentiality of any records or property shall prevent disclosure pursuant to subdivision (a), unless the provision specifically refers to and precludes access and examination and reproduction pursuant to subdivision (a).

(c) Any officer or person who fails or refuses to permit access, examination, and reproduction, as required by this section, is guilty of a misdemeanor.

(d) The Inspector General may require any employee of those entities specified in Section 6126 to be interviewed on a confidential basis. Any employee requested to be interviewed shall comply and shall have time afforded by the appointing authority for the purpose of an interview with the Inspector General or his or her designee. Any record created by an interview shall be deemed confidential for use by the Inspector General and the Secretary of the Youth and Adult Correctional Agency only. It is not the purpose of these communications to address disciplinary action or grievance procedures that may routinely occur. If it appears that the facts of the case could lead to punitive action, the Inspector General shall be subject to the provisions of the Public Safety Officers Procedural Bill

of Rights Act (Section 3300 of the Government Code et seq.) as if the Inspector General were the employer.

SEC. 9.5. Section 6126.6 is added to the Penal Code, to read:

6126.6. It is a misdemeanor for the Inspector General or any employee of the Inspector General to release any information received pursuant to this chapter except as provided by this chapter, or that is otherwise prohibited by law from being disclosed.

SEC. 10. Section 6127 of the Penal Code is repealed.

SEC. 10.5. Section 6127.1 is added to the Penal Code, to read:

6127.1. The Inspector General shall be deemed to be a department head for the purpose of Section 11189 of the Government Code in connection with any investigation or audit conducted pursuant to this chapter. The Inspector General shall have authority to hire or retain counsel to provide confidential advice during audits and investigations. If the Attorney General has a conflict of interest in representing the Inspector General in any litigation, the Inspector General shall have authority to hire or retain counsel to represent the Inspector General.

SEC. 11. Section 6127.3 is added to the Penal Code, to read:

6127.3. (a) In connection with an audit or investigation pursuant to this chapter, the Inspector General, or his or her designee, may do any of the following:

(1) Administer oaths.

(2) Certify to all official acts.

(3) Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, or documents in any medium, or for the making of oral or written sworn statements, in any investigative interview conducted as part of an audit or investigation.

(b) Any subpoena issued under this chapter extends as process to all parts of the state and may be served by any person authorized to serve process of courts of record or by any person designated for that purpose by the Inspector General, or his or her designee. The person serving this process may receive compensation as is allowed by the Inspector General, or his or her designee, not to exceed the fees prescribed by law for similar service.

SEC. 12. Section 6127.4 is added to the Penal Code, to read:

6127.4. (a) The superior court in the county in which any investigative interview is held under the direction of the Inspector General or his or her designee has jurisdiction to compel the attendance of witnesses, the making of oral or written sworn statements, and the production of papers, books, accounts, and documents, as required by any subpoena issued by the Inspector General or his or her designee.

(b) If any witness refuses to attend or testify or produce any papers required by the subpoena, the Inspector General or his or her designee may petition the superior court in the county in which the hearing is pending for an order compelling the person to attend and answer questions under penalty of perjury or produce the papers

required by the subpoena before the person named in the subpoena. The petition shall set forth all of the following:

(1) That due notice of the time and place of attendance of the person or the production of the papers has been given.

(2) That the person has been subpoenaed in the manner prescribed in this chapter.

(3) That the person has failed and refused to attend or produce the papers required by subpoena before the Inspector General or his or her designee as named in the subpoena, or has refused to answer questions propounded to him or her in the course of the investigative interview under penalty of perjury.

(c) Upon the filing of the petition, the court shall enter an order directing the person to appear before the court at a specified time and place and then and there show cause why he or she has not attended, answered questions under penalty of perjury, or produced the papers as required. A copy of the order shall be served upon him or her. If it appears to the court that the subpoena was regularly issued by the Inspector General or his or her designee, the court shall enter an order that the person appear before the person named in the subpoena at the time and place fixed in the order and answer questions under penalty of perjury or produce the required papers. Upon failure to obey the order, the person shall be dealt with as for contempt of court.

SEC. 13. Section 6128 of the Penal Code is amended to read:

6128. (a) The office of the Inspector General may receive communications from any individual, including those employed by any department, board, or authority who believes he or she may have information that may describe a variance from departmental investigatory policies and procedures. The identity of the person providing the information as well as the information provided shall be held as confidential by the Inspector General and may be disclosed, in confidence, only to the secretary, the Governor, the appropriate director or chair, or a law enforcement agency in the furtherance of their duties. It is not the purpose of these communications to redress any single disciplinary action or grievance that may routinely occur.

(b) In order to properly respond to any allegation of improper governmental activity, the Inspector General shall establish a toll-free public telephone number for the purpose of identifying any alleged wrongdoing by an employee of the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board, the Board of Corrections, the Narcotic Addict Evaluation Authority, the Prison Industry Authority, or the Youth and Adult Correctional Agency. This telephone number shall be posted by the above-named departments, and their respective subdivisions, in clear view of all employees and the public. When appropriate, the Inspector General shall initiate an investigation or audit of any alleged wrongdoing.

However, any request to conduct an investigation shall be in writing. The request shall be confidential and is not subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) The identity of the person providing the information that initiated the investigation shall not be disclosed without the person's written permission, except to a law enforcement agency in the furtherance of its duties.

SEC. 14. Section 4.5 of this bill incorporates amendments to Section 830.2 of the Penal Code proposed by both this bill and AB 1502. 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 830.2 of the Penal Code, and (3) this bill is enacted after AB 1502, in which case Section 4 of this bill shall not become operative.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 919

An act to add Sections 11325.9, 11325.91, 11325.93, and 11325.95 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

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

(a) Some long-term welfare dependent families face multiple barriers to employment, including serious problems with substance abuse, domestic violence, mental illness, and child abuse or neglect.

(b) These hard-to-serve families may need intensive interventions and treatment from a variety of service providers from different disciplines over a period of time.

(c) Local county welfare departments need to be able to develop coordinated and integrated case management services with multiple providers, such as therapists, school truant officers, public health nurses, probation officers, child welfare workers, and substance abuse counselors.

(d) Communication between providers is essential to avoid conflicting case plans, prevent duplications in services, and ensure the family's timely access to needed services.

(e) However, most of the programs that provide sensitive services to families have strict confidentiality standards that appropriately protect a family's right to privacy.

(f) Operating under these restrictive confidentiality rules often means that service providers work in isolation, exposing vulnerable families to conflicting schedules and demands.

SEC. 2. Section 11325.9 is added to the Welfare and Institutions Code, to read:

11325.9. (a) The department shall develop three-year pilot projects in Alameda County, San Bernardino County, and Ventura County, at the option of each county, to create an integrated and coordinated case management system for delivery of services to CalWORKs families who face multiple barriers to employment. This pilot program shall permit the exchange of information and records between members of a multidisciplinary services team for the purpose of coordinating services relevant to the prevention, identification, and treatment of the family's barriers to employment. Information shared between members of the multidisciplinary services team shall be maintained in a manner to ensure maximum protection of the family's privacy. Information shall not be shared between the team or otherwise disclosed, except as otherwise authorized by law, once an individual and his or her family no longer receive CalWORKs benefits or services.

(b) For purposes of this section and Sections 11325.91 to 11325.96, inclusive:

(1) "Multidisciplinary service team" or "team" means a team of two or more persons trained and qualified to provide one or more of the services listed in paragraph (2) who are assigned the responsibility, within an integrated welfare system, for identifying the educational, health, and social service needs of a member of an assistance unit, and for developing a plan to address those needs. Team members may include any of the following:

(A) Representatives of public employment services agencies under contract with the CalWORKs program.

(B) Psychiatrists, psychologists, or other trained counseling personnel involved in mental health treatment.

(C) Providers of substance abuse treatment.

(D) Medical personnel with sufficient training to provide health services.

(E) Any public or private school teacher, administrative officer, supervisor of child welfare and attendance, or certificated public personnel employee.

(F) Representatives of a domestic violence shelter.

(G) Probation officers.

(H) Social workers with experience or training in child abuse or abuse of elder or dependent adults.

(I) Representatives from public housing agencies.

(J) Other team members may be added if necessary and if approved by the client if the team member agrees to abide by the confidentiality requirements in Section 11325.93.

(2) "Integrated welfare system" means programs established by the state or by the pilot project county governments to provide two or more of the following services to households in which recipients of benefits under this chapter reside:

(A) Child welfare services.

(B) Employment services.

(C) Health care services.

(D) Mental health services.

(E) Substance abuse prevention and treatment.

(F) Child abuse prevention, identification, and treatment.

(G) Elder or dependent adult abuse prevention, identification, and treatment.

(H) Public housing services.

(I) Domestic violence counseling services.

(J) Juvenile probation services. However, representatives of juvenile probation may provide information to other team members, but may not receive information, records, or copies of records, from other team members.

(K) Educational services for children and adults.

(L) Nutrition services.

(M) Child care and development services.

(N) Learning disability evaluation.

(3) "Targeted population" means long-term welfare-dependent families with multiple barriers to employment, including, but not limited to, substance abuse, mental illness, child abuse and neglect, and domestic violence.

SEC. 3. Section 11325.91 is added to the Welfare and Institutions Code, to read:

11325.91. Notwithstanding any other provision of law, for purposes of Section 10850, a team engaged in any activity permitted pursuant to Section 11325.93 shall be deemed to be engaged in the administration of public social services.

SEC. 4. Section 11325.93 is added to the Welfare and Institutions Code, to read:

11325.93. (a) Team members may disclose to one another information about, and view records on, members of an assistance unit to the extent permitted by this section, for CalWORKs clients in the targeted population. In the operation of the pilot projects authorized by Section 11325.9, information disclosed or records viewed by team members shall be limited to relevant information or records necessary to formulate an integrated services plan or to deliver services to children and families. All information or

documents, or copies of documents, to be disclosed by team members shall be necessary to the prevention, identification, and treatment of a parent's or guardian's barriers to employment.

(b) If team members require records held by other team members, copies may be provided subject to the limitations of subdivision (c). Requests for copies shall be limited to the records necessary to formulate an integrated services plan, or to deliver services to children and their families.

(c) (1) Team members who receive information or records pertaining to a member of an assistance unit shall be allowed to establish and maintain a common computer data base for the purpose of planning and delivering services. The data base may contain demographic data and data on the level of individual involvement with an assistance unit member. The data base shall be for the use and disclosure only within the program, except by properly authorized consent of the CalWORKs recipient. A memorandum of understanding shall be established that specifies what types of information may be shared and for what purposes.

(2) Juvenile probation services shall be involved in the integrated welfare system for the limited purpose of providing information that directly affects the parent's or guardian's ability to participate in employment training or employment.

(3) Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code, shall apply to the programs or services providing integrated services. Programs or services that seek access to an individual's medical information, including mental health and drug treatment records, shall be required to obtain informed authorization from the individual or from the custodial parent or guardian if the individual is a minor, unless a minor is authorized to give consent. Medical information shall not be disclosed to any individual who is not authorized to have that information pursuant to the authorization. Medical information shall not be disclosed for any purpose not authorized by the authorization. A client shall have access to his or her medical information and the right to correct any inaccurate information.

(4) The pilot program may authorize use of information contained in the data base for bona fide evaluation and research purposes, unless otherwise prohibited by law. No information disclosed under this paragraph shall permit identification of the CalWORKs recipient or his or her family members.

(5) The release of copies of records protected by evidentiary privileges, as defined in Chapter 4 (commencing with Section 930) of Division 8 of the Evidence Code, may take place only after the team has received a form permitting release of records on the assistance unit member, which is signed by the member or the member's custodial parent or guardian if the member is a minor. This paragraph shall not be construed to waive any right of privilege

contained in the Evidence Code, except in compliance with Section 912 of that code.

(d) The sharing of information permitted under subdivisions (a), (b), and (c) shall be governed by memoranda of understanding among the agencies represented on the team. These memoranda shall specify the types of information that may be shared without a signed release form, in accordance with subdivision (c), and the process to be used to ensure that current confidentiality requirements, as described in subdivision (e), are met.

(e) Every team member shall be under the same privacy and confidentiality obligations and subject to the same confidentiality penalties as the person disclosing or providing the information or records. The information or records obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(f) This section shall not be construed to restrict guarantees of confidentiality provided under federal law.

(g) Nothing in this section shall be construed to affect the authority of a health care provider to disclose medical information pursuant to paragraph (1) of subdivision (c) of Section 56.10 of the Civil Code.

(h) Information and records communicated or provided to the pilot programs by all providers, programs, and agencies, as well as information and records created by the program in the course of serving CalWORKs recipients and their families, shall be deemed private and confidential, and shall be protected from discovery and disclosure by all applicable statutory and common-law protections. Civil and criminal penalties shall apply to the inappropriate disclosure of information held by the pilot programs. This section shall not affect the authority of a health care provider to disclose medical information pursuant to paragraph (1) of subdivision (c) of Section 56.10 of the Civil Code.

SEC. 5. Section 11325.95 is added to the Welfare and Institutions Code, to read:

11325.95. The department shall prepare a report, for submission to the Legislature on or before April 1, 2002, on the outcomes of the pilot program established pursuant to Sections 11325.9 to 11325.93, inclusive, improving coordinated case management, assisting hard-to-serve CalWORKs families in alleviating multiple barriers to employment, and integrating service delivery within the multidisciplinary services team structure. The department shall also include in the report an analysis of the impact that record and information sharing has on CalWORKs recipients and their families, whether this information sharing pilot program results in increased employment rates of hard-to-serve parents, and whether there are

any adverse consequences to recipients resulting from information sharing among agencies.

CHAPTER 920

An act to add Chapter 4.8 (commencing with Section 24530) to Division 20 of the Health and Safety Code, relating to product safety.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Chapter 4.8 (commencing with Section 24530) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 4.8. BUNK BEDS

24530. This chapter shall be known as and may be cited as the Bunk Bed Safety Act of 1999.

24531. The Legislature finds and declares the following:

(a) No state or federal law exists mandating the safety of bunk beds intended for use by children.

(b) Since November 1994, the federal Consumer Product Safety Commission has recalled more than 500,000 bunk beds that posed serious health hazards to children, including thousands manufactured in California.

(c) At least 54 children have died from head entrapment in bunk beds since 1990.

24532. (a) As used in this chapter, "sale" or "sell" means remanufacturing, retrofitting, selling, contracting to sell or resell, leasing, subletting, or otherwise placing in the stream of commerce.

(b) As used in this chapter, "commercial user" means any person who deals in or engages in the business of selling bunk beds or who otherwise by one's occupation holds oneself out as having knowledge or skill peculiar to bunk beds, or any person who sells bunk beds.

24533. (a) No commercial user shall sell, on or after January 1, 2000, a bunk bed that is unsafe for any child using the bunk bed.

(b) A bunk bed is presumed to be unsafe for purposes of this section if it does not conform to the American Society for Testing Materials (ASTM) Voluntary Standard Consumer Safety Specification for Bunk Beds, F1427-96, with the following modifications:

(1) Section 4.5.5 of the Performance Requirements pertaining to guardrails is deleted and replaced with the following: "4.5.5. Guardrails shall run the full length of the bed, connecting to both bed end structures."

(2) Section 4.6.3 of the Performance Requirements pertaining to lower bunks is deleted and replaced with the following: "4.6.3. When tested in accordance with 5.6.2, there shall be no opening in the end structure of the lower bunk, from the level of the lower bunk mattress support system to the level of the upper bunk mattress support system, that will permit free passage of the wedge block shown in Figure 1, unless they are large enough to permit the free passage of a 9 inch (230 mm) diameter rigid sphere. This requirement does not apply to openings that are below the level of the lower bunk foundation support system."

(3) A safe bunk bed shall comply with the neck entrapment safety standard specified in Section 1213.4(c)(3) of Title 16 of the Code of Federal Regulations as published in the Notice of Proposed Rulemaking in the Federal Register (Vol. 64, No. 131, July 9, 1999, at page 37057).

24534. On or after January 1, 2000, any commercial user who willfully and knowingly violates Section 24533 is guilty of an infraction and shall be punished by a fine not exceeding one thousand dollars ($1,000).

24535. Any person may maintain an action against any commercial user who violates Section 24533 to enjoin the sale of a bunk bed that is unsafe for any child using the bunk bed, and for reasonable attorney's fees and costs. This section shall not apply to hotels, motels, or similar transient lodging until January 1, 2003.

24536. Remedies available under this article shall be in addition to any other remedies or procedures under any other provision of law that may be available to an aggrieved party.

24537. This chapter does not apply to any bunk bed that was manufactured prior to January 1, 2000, if the sale of the bunk bed is accompanied by a disclosure statement attached in a conspicuous place on the bunk bed that states the following: "This bunk bed does not conform to the Bunk Bed Safety Act of 1999. Exercise caution before you select this product."

24538. Nothing in this chapter shall supersede any provision of federal law or any regulation adopted pursuant to federal law.

SEC. 2. If any provision of this act or the application thereof to any person or circumstances is held invalid or unconstitutional, that invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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 921

An act to amend Sections 56113, 56375, 57080, and 57087.3 of the Government Code, relating to local government organization.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 56113 of the Government Code is amended to read:

56113. (a) The authority to initiate, conduct, and complete any proceeding pursuant to Section 56112 does not apply to any territory which, after January 1, 2000, became surrounded or substantially surrounded by the city to which annexation is proposed. The authority to initiate, conduct, and complete any proceeding pursuant to Section 56112 shall expire January 1, 2007. The period of time between January 1, 2000, and January 1, 2007, shall not include any period of time during which, in an action pending in any court, a local agency is enjoined from conducting proceedings pursuant to Section 56112. Upon final disposition of that case, the previously enjoined local agency may initiate, conduct, and complete proceedings pursuant to Section 56112 for the same period of time as was remaining under that seven-year limit at the time the injunction commenced. However, if the remaining time is less than six months, that authority shall continue for six months following final disposition of the action.

(b) Between January 1, 2000, and January 1, 2007, no new proposal involving the same or substantially the same territory as a proposal initiated pursuant to Section 56112 after January 1, 2000, shall be initiated for two years after the date of adoption by the commission or by the conducting authority of a resolution terminating proceedings.

SEC. 2. Section 56375 of the Government Code is amended to read:

56375. The commission shall have all of the following powers and duties subject to any limitations upon its jurisdiction set forth in this part:

(a) To review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization. Effective July 1, 1994, the commission may initiate proposals for (1) consolidation of districts, as defined in Section 56036, (2) dissolution, (3) merger, or (4)

establishment of a subsidiary district, or a reorganization that includes any of these changes of organization. A commission shall have the authority to initiate only a (1) consolidation of districts, (2) dissolution, (3) merger, (4) establishment of a subsidiary district, or (5) a reorganization that includes any of these changes of organization, if that change of organization or reorganization is consistent with a recommendation or conclusion of a study prepared pursuant to Section 56378 or 56425. However, a commission shall not have the power to disapprove an annexation to a city, initiated by resolution, of contiguous territory that the commission finds is any of the following:

(1) Surrounded or substantially surrounded by the city to which the annexation is proposed or by that city and a county boundary or the Pacific Ocean if the territory to be annexed is substantially developed or developing, is not prime agricultural land as defined in Section 56064, is designated for urban growth by the general plan of the annexing city, and is not within the sphere of influence of another city.

(2) Located within an urban service area that has been delineated and adopted by a commission, which is not prime agricultural land, as defined by Section 56064, and is designated for urban growth by the general plan of the annexing city.

(3) An annexation or reorganization of unincorporated islands meeting the requirements of subdivision (d).

As a condition to the annexation of an area that is surrounded, or substantially surrounded, by the city to which the annexation is proposed, the commission may require, where consistent with the purposes of this division, that the annexation include the entire island of surrounded, or substantially surrounded, territory.

A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements. When the development purposes are not made known to the annexing city, the annexation shall be reviewed on the basis of the adopted plans and policies of the annexing city or county. This paragraph does not prohibit a commission from requiring, as a condition to annexation, that a city prezone the territory to be annexed. However, the commission shall not specify how, or in what manner, the territory shall be prezoned.

(b) With regard to a proposal for annexation or detachment of territory to, or from, a city or district or with regard to a proposal for reorganization that includes annexation or detachment, to determine whether territory proposed for annexation or detachment, as described in its resolution approving the annexation, detachment, or reorganization, is inhabited or uninhabited.

(c) With regard to a proposal for consolidation of two or more cities or districts, to determine which city or district shall be the consolidated, successor city or district.

(d) To approve the annexation to a city after notice and hearing, and authorize the conducting authority to order annexation of the territory without an election, or waive the conducting authority proceedings if the annexation meets the requirements of this subdivision and is proposed by resolution adopted by the affected city, if the commission finds that the territory contained in an annexation proposal meets all of the following requirements:

(1) It does not exceed 75 acres in area, that area constitutes the entire island, and that island does not constitute a part of an unincorporated area that is more than 100 acres in area.

(2) The territory constitutes an entire unincorporated island located within the limits of a city, or constitutes a reorganization containing a number of individual unincorporated islands.

(3) It is surrounded in either of the following ways:

(A) Surrounded, or substantially surrounded, by the city to which annexation is proposed or by the city and a county boundary or the Pacific Ocean.

(B) Surrounded by the city to which annexation is proposed and adjacent cities.

(C) This subdivision shall not be construed to apply to any unincorporated island within a city that is a gated community where services are currently provided by a community services district.

(D) Notwithstanding any other provision of law, at the option of either the city or the county, a separate property tax transfer agreement may be agreed to between a city and a county pursuant to Section 99 of the Revenue and Taxation Code regarding an annexation subject to this subdivision without affecting any existing master tax sharing agreement between the city and county.

(4) It is substantially developed or developing. The finding required by this subparagraph shall be based upon one or more factors, including, but not limited to, any of the following factors:

(A) The availability of public utility services.

(B) The presence of public improvements.

(C) The presence of physical improvements upon the parcel or parcels within the area.

(5) It is not prime agricultural land, as defined by Section 56064.

(6) It will benefit from the annexation or is receiving benefits from the annexing city.

Notwithstanding any other provision of this subdivision, this subdivision shall not apply to all or any part of that portion of the redevelopment project area referenced in subdivision (e) of Section 33492.41 of the Health and Safety Code that as of January 1, 2000, that meets all of the following requirements: is unincorporated territory; contains at least 100 acres; is surrounded or substantially surrounded by incorporated territory; and contains at least 100 acres zoned for commercial or industrial uses or is designated on the applicable county general plan for commercial or industrial uses.

(e) To approve the annexation of unincorporated, noncontiguous territory, subject to the limitations of Section 56111, located in the same county as that in which the city is located, and that is owned by a city and used for municipal purposes and to authorize the conducting authority to annex the territory without notice and hearing.

(f) Subject to Section 56029, to designate in the resolution making determinations the conducting authority for proceedings.

(g) When a change of organization or a reorganization includes the annexation of inhabited territory to a city and the assessed value of land within the territory equals one-half or more of the assessed value of land within the city, or the number of registered voters residing within the territory equals one-half or more of the number of registered voters residing within the city, to determine as a condition of the proposal that the change of organization or reorganization shall also be subject to confirmation by the voters in an election to be called, held, and conducted within the territory of the city to which annexation is proposed.

(h) With respect to the incorporation of a new city or the formation of a new special district, to determine the number of registered voters residing within the proposed city or special district. The number of registered voters shall be calculated as of the time of the last report of voter registration by the county clerk to the Secretary of State prior to the date the first signature was affixed to the petition. The executive officer shall notify the petitioners of the number of registered voters resulting from this calculation.

(i) To adopt written procedures for the evaluation of proposals. The commission may adopt standards for any of the factors enumerated in Section 56841. Any standards adopted by the commission shall be written.

(j) To adopt standards and procedures for the evaluation of service plans submitted pursuant to Section 56653 and the initiation of a change of organization or reorganization pursuant to subdivision (a).

(k) To make and enforce regulations for the orderly and fair conduct of hearings by the commission.

(*l*) To incur usual and necessary expenses for the accomplishment of its functions.

(m) To appoint and assign staff personnel and to employ or contract for professional or consulting services to carry out and effect the functions of the commission.

(n) To review the boundaries of the territory involved in any proposal with respect to the definiteness and certainty of those boundaries, the nonconformance of proposed boundaries with lines of assessment or ownership, and other similar matters affecting the proposed boundaries.

(o) To waive the restrictions of Section 56109 if it finds that the application of the restrictions would be detrimental to the orderly

development of the community and that the area that would be enclosed by the annexation or incorporation is so located that it cannot reasonably be annexed to another city or incorporated as a new city.

(p) To waive the application of Section 25210.90 or Section 22613 of the Streets and Highways Code if it finds the application would deprive an area of a service needed to ensure the health, safety, or welfare of the residents of the area and if it finds that the waiver would not affect the ability of a city to provide any service. However, within 60 days of the inclusion of the territory within the city, the legislative body may adopt a resolution nullifying the waiver.

(q) If the proposal includes the incorporation of a city, as defined in Section 56043, or the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, the commission shall determine the property tax revenue to be exchanged by the affected local agencies pursuant to Section 56842.

(r) To authorize a city or district to provide new or extended services outside its jurisdictional boundaries pursuant to Section 56133.

SEC. 3. Section 57080 of the Government Code is amended to read:

57080. (a) With respect to a proceeding initiated on or after January 1, 2000, when approved and authorized by the commission pursuant to subdivision (d) of Section 56375, the conducting authority shall, not later than 35 days after conclusion of the hearing, adopt a resolution ordering the annexation without an election or shall, by resolution, terminate the proceedings. Sections 57050, 57051, 57052, subdivision (a) of 57075, and Section 57078 do not apply to any annexation subject to this subdivision.

(b) With respect to a proceeding initiated on or after January 1, 2007, when approved and authorized by the commission pursuant to subdivision (d) of Section 56375, Sections 57050, 57051, and 57052, shall apply and subdivision (a) of Section 57075 does not apply.

(1) If the territory proposed to be annexed is inhabited territory, the conducting authority, not more than 30 days after conclusion of the hearing, shall adopt a resolution making a finding regarding the value of written protests filed and not withdrawn and shall do either of the following:

(A) Terminate proceedings if written protests have been filed and not withdrawn by 50 percent or more of the registered voters within the affected territory.

(B) Order the territory annexed without an election.

(2) If the territory proposed to be annexed is uninhabited, the conducting authority, not more than 30 days after conclusion of the hearing, shall adopt a resolution which does either of the following:

(A) Terminates proceedings.

(B) Orders the territory annexed.

SEC. 4. Section 57087.3 of the Government Code is amended to read:

57087.3. The merger of a subsidiary district with a city, of which the city council is also the governing board of that subsidiary district, shall not be subject to Sections 99 and 99.01 of the Revenue and Taxation Code if the city council adopts a resolution that states that the city shall do all of the following:

(a) Continue providing the services of the subsidiary district at the same level to those areas outside the city's boundaries, but within the territory of the subsidiary district, as the services provided for territory within the city limits.

(b) Assume all assets of the subsidiary district.

(c) Assume all liabilities of the subsidiary district.

(d) Assume all ad valorem taxes, other accounts receivable, and other revenues of the subsidiary district.

CHAPTER 922

An act to add Section 2244 to the Business and Professions Code, relating to the practice of medicine, and making an appropriation therefor.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 2244 is added to the Business and Professions Code, to read:

2244. A physician and surgeon who collects biological specimens for clinical testing or examination shall secure or ensure that his or her employees, agents, or contractors secure those specimens in a locked container when those specimens are placed in a public location outside of the custodial control of the licensee, or his or her employees, agents, or contractors, pursuant to the requirements of Section 681.

Commencing July 1, 2000, the board may impose a fine against a licensee not to exceed the sum of one thousand dollars ($1,000) for a violation of this section.

This section shall not apply when the biological specimens have been received by mail in compliance with all applicable laws and regulations.

SEC. 2. This bill shall only become operative if both this bill and Senate Bill 765 of the 1999–2000 Regular Session are enacted and become effective on or before January 1, 2000.

CHAPTER 923

An act to add Chapter 9 (commencing with Section 44275) of Part 5 of Division 26 of, the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

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

(a) The state and federal governments have adopted ambient air quality standards to protect public health, and it is in the public interest that those standards be achieved as expeditiously as possible.

(b) California air quality agencies have adopted a State Implementation Plan (SIP) for attaining the federal ambient air quality standards for ozone, which commits the state to substantially reduce emissions of oxides of nitrogen from mobile sources through the year 2010. The critical sources of those emissions to address are onroad heavy-duty vehicles, offroad nonrecreational equipment and vehicles, locomotives, diesel marine vessels, stationary agricultural engines, and other high-emitting diesel engines.

(c) Plans are also being adopted to meet air quality goals for inhalable particulates that are also produced by these sources.

(d) Air quality plans include intermediate milestone objectives and measures to ensure regular progress in reducing emissions. Steady progress in reducing oxides of nitrogen and particulate emissions is essential for meeting air quality goals.

(e) Emission reductions from onroad heavy-duty vehicles, offroad nonrecreational equipment and vehicles, locomotives, diesel marine vessels, and stationary agricultural engines of the magnitude needed to achieve California SIP commitments and public health goals can only be achieved with a combination of appropriate state, national, and international emissions standards, and special programs targeting California nonattainment areas that must achieve emission reductions beyond those attainable through new emissions standards and normal turnover rates of vehicles, equipment, and vessels.

(f) Several advanced low-NO_x technologies have become available for retrofits, repowers, and new equipment purchases. These technologies, however, are limited in applicability and suitability and do not justify regulatory requirements. In addition to reducing NO_x emissions, the new technologies may reduce particulate emissions, providing additional public health benefits.

(g) Incentive-based programs with voluntary participation to introduce newer engines, electric motors and drives, and advanced

technologies are the best way to supplement new engine emissions standards and to reduce emissions from onroad heavy-duty vehicles, offroad nonrecreational equipment and vehicles, locomotives, diesel marine vessels, and stationary agricultural engines to the extent needed to meet air quality goals while still protecting the economic competitiveness of California's industry and agriculture.

(h) The Legislature further finds and declares that because of the extraordinary leadership and dedication shown by the late Dr. Carl Moyer in conceiving and developing the program embodied in this act, it is appropriate to recognize his vision and contributions to the public interest by dedicating the program to his memory.

(i) The Carl Moyer Memorial Air Quality Standards Attainment Program created by subdivision (a) of Section 44280 of the Health and Safety Code and the Carl Moyer Memorial Air Quality Standards Attainment Trust Fund establish an incentive program that will substantially reduce emissions of oxides of nitrogen and fine particulate in California. It is the intent of the Legislature that the program be a multiyear program that will be a key component of California's plan to comply with federal Clean Air Act requirements.

SEC. 2. Chapter 9 (commencing with Section 44275) is added to Part 5 of Division 26 of the Health and Safety Code, to read:

CHAPTER 9. CARL MOYER MEMORIAL AIR QUALITY STANDARDS ATTAINMENT PROGRAM

Article 1. Definitions

44275. As used in this chapter, the following terms have the following meaning:

(a) "Advisory board" means the Carl Moyer Program Advisory Board created by Section 44297.

(b) "Btu" means British thermal unit.

(c) "Commission" means the State Energy Resources Conservation and Development Commission.

(d) "Cost-effectiveness" means dollars provided to a project pursuant to subdivision (d) of Section 44283 for each ton of NO_x emission reduction attributed to a project or to the program as a whole. In calculating cost-effectiveness, one-time grants of funds made at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the state board, taking into account the interest rate on bonds, interest earned by state funds, and other factors as determined appropriate by the state board. Cost-effectiveness shall be calculated by dividing annualized costs by average annual emissions reduction of NO_x in this state.

(e) "Covered engine" includes any internal combustion engine or electric motor and drive powering a covered source.

(f) "Covered source" includes onroad vehicles of 14,000 pounds GVWR or greater, offroad nonrecreational equipment and vehicles, locomotives, diesel marine vessels, stationary agricultural engines, and, as determined by the state board, other high-emitting diesel engine categories.

(g) "Covered vehicle" includes any vehicle or piece of equipment powered by a covered engine.

(h) "District" means a county air pollution control district or an air quality management district.

(i) "Fund" means the Carl Moyer Memorial Air Quality Standards Attainment Trust Fund created by Section 44299.

(j) "Mobile Source Air Pollution Reduction Review Committee" means the Mobile Source Air Pollution Reduction Review Committee created by Section 44244.

(k) "Incremental cost" means the cost of the project less a baseline cost that would otherwise be incurred by the applicant in the normal course of business. Incremental costs may include added lease or fuel costs pursuant to Section 44283 as well as incremental capital costs.

(*l*) "New very low emission vehicle" means a vehicle that qualifies as a very low emission vehicle when it is a new vehicle, where new vehicle has the same meaning as defined in Section 430 of the Vehicle Code, or that is modified with the approval and warranty of the original equipment manufacturer to qualify as a very low emission vehicle within 12 months of delivery to an owner for private or commercial use.

(m) "NO_x" means oxides of nitrogen.

(n) "Program" means the Carl Moyer Memorial Air Quality Standards Attainment Program created by subdivision (a) of Section 44280.

(o) "Repower" means replacing an engine with a different engine. The term repower, as used in this chapter, generally refers to replacing an older, uncontrolled engine with a new, emissions-certified engine, although replacing an older emissions-certified engine with a newer engine certified to lower emissions standards may be eligible for funding under this program.

(p) "Retrofit" means making modifications to the engine and fuel system such that the retrofitted engine does not have the same specifications as the original engine.

(q) "Very low emission vehicle" means a vehicle with emissions significantly lower than otherwise applicable baseline emission standards or uncontrolled emission levels pursuant to Section 44282.

Article 2. Program Introduction

44280. (a) There is hereby created the Carl Moyer Memorial Air Quality Standards Attainment Program. The program shall be administered by the state board in accordance with this chapter. The administration of the program may be delegated to the districts.

(b) The program shall provide grants to offset the incremental cost of projects that reduce emissions of NO_x from covered sources in California. Eligibility for grant awards shall be determined by the state board, in consultation with the districts, in accordance with this chapter.

(c) The program shall also provide funding for a fueling infrastructure demonstration program and for technology development efforts that are expected to result in commercially available technologies in the near-term that would improve the ability of the program to achieve its goals. The infrastructure demonstration and technology development portions of the program shall be managed by the commission, in consultation with the state board.

Article 3. Eligible Projects and Applicants

44281. (a) Eligible projects are any of the following:

(1) Purchase of new very low or zero-emission covered vehicles or covered engines.

(2) Emission-reducing retrofit of covered engines, or replacement of old engines powering covered sources with newer engines certified to more stringent emissions standards than the engine being replaced, or with electric motors or drives.

(3) Purchase and use of emission-reducing add-on equipment for covered vehicles.

(4) Development and demonstration of practical, low-emission retrofit technologies, repower options, and advanced technologies for covered engines and vehicles with very low emissions of oxides of nitrogen.

(b) No new purchase, retrofit, repower, or add-on equipment shall be funded under this chapter if it is required by any local, state, or federal statute, rule, regulation, memoranda of agreement or understanding, or other legally binding document, except that an otherwise qualified project may be funded even if the State Implementation Plan assumes that the change in equipment, vehicles, or operations will occur, if the change is not required by a statute, regulation, or other legally binding document in effect as of the date the grant is awarded. No project funded by the program shall be used for credit under any state or federal emissions averaging, banking, or trading program. No emission reduction generated by the program shall be used as marketable emission reduction credits or to offset any emission reduction obligation of any entity. Projects involving new engines that would otherwise generate marketable credits under state or federal averaging, banking, and trading programs shall include transfer of credits to the engine end user and retirement of those credits toward reducing air emissions in order to qualify for funding under the program. A purchase of a low-emission vehicle or of equipment pursuant to a corporate or a controlling

board's policy, but not otherwise required by law, shall generate surplus emissions reductions and may be funded by the program.

(c) The program may also provide funding toward installation of fueling or electrification infrastructure as provided in Section 44284.

(d) Eligible applicants may be any individual, company, or public agency that owns one or more covered vehicles that operate primarily within California or otherwise contribute substantially to the NO_x emissions inventory in California.

(e) It is the intent of the Legislature that all emission reductions generated by this chapter shall contribute to public health by reducing, for the life of the vehicle being funded, the total amount of emissions in California.

Article 4. General Eligibility Criteria

44282. The following criteria apply to all projects to be funded through the program except for projects funded through the Advanced Technology Account and the Infrastructure Demonstration Program:

(a) Except for projects involving marine vessels, 75 percent or more of vehicle miles traveled or hours of operation shall be projected to be in California for at least five years following the grant award. Projects involving marine vessels and engines shall be limited to those that spend enough time operating in California air basins over the lifetime of the project to meet the cost-effectiveness criteria based on NO_x reductions in California, as provided in Section 44283.

(b) To be eligible, projects shall meet cost-effectiveness per ton of NO_x reduced requirements of Section 44283.

(c) To be eligible, retrofits, repowers, and installation of add-on equipment for covered vehicles shall be performed, or new covered vehicles delivered to the end user, on or after the date the program is implemented.

(d) Retrofit technologies, new engines, and new vehicles shall be certified for sale or under experimental permit for operation in California.

(e) Repower projects that replace older, uncontrolled engines with new, emissions-certified engines or that replace emissions-certified engines with new engines certified to a more stringent NO_x emissions standard are approvable subject to the other applicable selection criteria. The state board shall determine appropriate baseline emission levels for the uncontrolled engines being replaced.

(f) Retrofit and add-on equipment projects shall document a NO_x emission reduction of at least 25 percent and no increase in particulate emissions compared to the applicable baseline emissions accepted by the state board for that engine year and application. The state board shall determine appropriate baseline emission levels. Acceptable documentation shall be defined by the state board. After

study of available emission reduction technologies and after public notice and comment, the state board may revise the minimum percentage NO_x reduction criterion for retrofits and add-on equipment provided for in this section to improve the ability of the program to achieve its goals.

(g) (1) For projects involving the purchase of new very low or zero-emission vehicles, engines shall be certified to an optional low NO_x emissions standard established by the state board, except as provided for in paragraph (2).

(2) For projects involving the purchase of new very low or zero-emission covered vehicles for which no optional low-NO_x emission standards are available, documentation shall be provided showing that the low or zero-emission engine emits not more than 70 percent of the NO_x or NO_x plus hydrocarbon emissions of a new engine certified to the applicable baseline NO_x or NO_x plus hydrocarbon emission standard for that engine and meets applicable particulate standards. The state board shall specify the documentation required. If no baseline emission standard exists for new vehicles in a particular category, the state board shall determine an appropriate baseline emission level for comparison.

Article 5. Cost-Effectiveness Criteria

44283. (a) Grants shall not be made for projects with a cost-effectiveness, calculated in accordance with this section, of more than twelve thousand dollars ($12,000) per ton of NO_x reduced in California.

(b) Only NO_x reductions occurring in this state shall be included in the cost-effectiveness determination. The extent to which emissions generated at sea contribute to air quality in California nonattainment areas shall be incorporated into these methodologies based on a reasonable assessment of currently available information and modeling assumptions.

(c) The state board shall develop protocols for calculating the surplus NO_x reductions in California from representative project types over the life of the project.

(d) The cost of the NO_x reduction is the amount of the grant from the program, including matching funds provided pursuant to subdivision (e) of Section 44287, plus any other state funds, or funds under the district's budget authority or fiduciary control, provided toward the project. The state board shall establish reasonable methodologies for evaluating project cost-effectiveness, consistent with the definition contained in subdivision (c) of Section 44275, and with accepted methods, taking into account a fair and reasonable discount rate or time value of public funds.

(e) A grant shall not be made that, net of taxes, provides the applicant with funds in excess of the incremental cost of the project. Incremental lease costs may be capitalized according to guidelines

adopted by the state board so that these incremental costs may be offset by a one-time grant award.

(f) Funds under a district's budget authority or fiduciary control may be used to pay for the incremental cost of liquid or gaseous fuel, other than standard gasoline or diesel, which is integral to a NO_x reducing technology that is part of a project receiving grant funding under the program. The fuel shall be approved for sale by the state board. The incremental fuel cost over the expected lifetime of the vehicle may be offset by the district if the project as a whole, including the incremental fuel cost, meets all of the requirements of this chapter, including the maximum allowed cost-effectiveness. The state board shall develop an appropriate methodology for converting incremental fuel costs over the vehicle lifetime into an initial cost for the purposes of determining project cost-effectiveness. Incremental fuel costs may not be included in project costs for fuels dispensed from any facility that was funded, in whole or in part, from the fund.

(g) For purposes of determining any grant amount pursuant to this chapter, the incremental cost of any new purchase, retrofit, repower, or add-on equipment shall be reduced by the value of any current financial incentive that directly reduces the project price, including any tax credits or deductions, grants, or other public financial assistance. Project proponents applying for funding shall be required to state in their application any other public financial assistance to the project.

(h) For projects that would repower offroad equipment by replacing uncontrolled diesel engines with new, certified diesel engines, the state board may establish maximum grant award amounts per repower. A repower project shall also be subject to the incremental cost maximum pursuant to subdivision (e).

(i) After study of available emission reduction technologies and costs and after public notice and comment, the state board may reduce the values of the maximum grant award criteria stated in this section to improve the ability of the program to achieve its goals. Every year the state board shall adjust the maximum cost-effectiveness amount established in subdivision (a) and any per-project maximum set by the state board pursuant to subdivision (h) to account for inflation.

Article 6. Infrastructure Demonstration Project

44284. (a) In order to provide sufficient support for low-emission vehicle projects at the start of the program, the commission shall administer a demonstration project that provides limited funds for fueling infrastructure. Expenditures from the fund for this demonstration program shall not exceed two million five hundred thousand dollars ($2,500,000). In addition to providing necessary financial assistance to a limited number of infrastructure projects, the purpose of the infrastructure demonstration program is to assess

whether funding for infrastructure is an appropriate and cost-effective use of public funds.

(b) The commission shall solicit applications for a balanced mix of demonstration projects involving fueling and electrification infrastructure that is linked to covered vehicle projects and that is consistent with program goals. The commission, in consultation with participating districts, shall make every effort to coordinate infrastructure projects with covered vehicle projects representing a broad variety of fuels, technologies, and applications as appropriate and consistent with this chapter. Infrastructure projects that begin to dispense qualifying fuel on or after the date the program is implemented are eligible for funding under the program. The commission may also subvene infrastructure funds to districts to solicit applications and to expend the funds in accordance with this section. The commission shall have oversight and reporting responsibility for any funds that are subvened pursuant to this subdivision.

(c) Any fueling infrastructure funded under the program shall be approved for funding by both the commission and the applicable district. The commission, in consultation with the districts, shall develop guidelines and criteria for infrastructure projects to be funded under the program.

(d) The purchase and installation of equipment at a site that is designed primarily to dispense qualifying fuel is eligible for funding under the program. "Qualifying fuel" includes any liquid or gaseous fuel, other than standard gasoline or diesel, which is ultimately dispensed into covered vehicles that provide NO_x reductions in California, and which were introduced into operation in California on or after the date the program is implemented.

(e) Infrastructure projects to dispense qualifying fuel are eligible for funding from the Infrastructure Demonstration Program at a rate of seven dollars ($7) in one-time funding per million Btus of qualifying fuel to be dispensed annually. Projects that cannot demonstrate sufficient annual fuel throughput to qualify for a one hundred thousand dollar ($100,000) award, that is, over 14,280 million Btus per year, are not eligible for funding. Projects that can demonstrate an annual throughput of more than 14,280 million Btus per year, however, may request funding in amounts less than one hundred thousand dollars ($100,000). Private access facilities are eligible for a maximum award of up to four hundred thousand dollars ($400,000). Public access or limited public access facilities are eligible for a maximum award of up to six hundred thousand dollars ($600,000). Cofunding may be required to receive the applicable award amount. Infrastructure project awards from the fund, net of taxes, shall not exceed the total cost of the infrastructure project less any other applicable grants or tax credits.

(f) Infrastructure projects to dispense qualifying fuel shall meet all of the following criteria:

(1) Provide documentation, signed by owners of vehicles that will use the fuel, to demonstrate that an approvable amount of qualifying fuel is expected to be dispensed over a period of at least five years.

(2) Be designed to meet current industry standards and codes and any applicable regulations.

(3) If the owner of the fuel storage and dispensing equipment will be fueling vehicles the owner does not own, the owner shall provide one or more statements, signed by the proposed fueling equipment owner and by the owners of those vehicles that are referenced in the demonstration of adequate fuel throughput pursuant to subdivision (e), that mutually satisfactory arrangements regarding fuel price have been made. If the owner and operator of the fueling equipment will use the equipment exclusively to fuel his or her own vehicles, no documentation regarding fuel pricing arrangements is required.

(g) Infrastructure projects to dispense electricity to covered vehicles shall be eligible for funding from the Infrastructure Demonstration Program at the rate of a minimum of four thousand dollars ($4,000), up to a maximum of ten thousand dollars ($10,000) per charger infrastructure charge port including installation for each qualifying charger. A "qualifying charger" is any charger that dispenses 4,000 kWh or more of energy per year, through each of one or more charging ports, into one or more covered vehicles that provide NO_x reductions in California. Awards shall be based on a sliding scale of four thousand dollars ($4,000) to fourteen thousand dollars ($14,000) per charger port for qualifying chargers that dispense between 4,000 kWh and 15,000 kWh of electricity per port. In order for the project to be eligible for funding, documentation shall be provided, signed by owners of the vehicles that will use the charger, to demonstrate that the claimed kilowatt hours of electricity are expected to be dispensed per year for a period of at least five years. Funding shall be limited to a maximum award of two hundred thousand dollars ($200,000) per business per location. Infrastructure project awards from the fund, net of taxes, shall not exceed the total cost of the infrastructure project less any other applicable grants or tax credits.

(h) The commission, in consultation with the state board and the districts, shall develop a simple, standardized application package for a project to be funded from the Infrastructure Demonstration Program. In addition to the application form, an application package shall include a brief description of the program, the projects that are eligible for the funding that is available, the selection criteria and evaluation process, the documentation that is required, and who to contact for more information, as well as an example of the contract that an applicant will be required to execute before receiving a grant award. The application form shall require as much information as the commission determines is necessary to properly evaluate each project, but shall otherwise minimize the information required. An applicant shall not be required to calculate tons of emissions reduced

or cost-effectiveness as part of the application. Application packages shall be finalized and published as soon as practicable.

(i) The commission shall make staff or technical support contractors available on an as-needed basis within available budgetary resources to assist project proponents to address issues common to infrastructure projects eligible for funding. Those issues may involve permitting and safety requirements.

(j) As part of the annual program reports required pursuant to Section 44295, the commission shall report on the use of Infrastructure Demonstration Program funds. The commission shall report on facilities funded, how those facilities are supporting covered vehicle projects, fuel or electricity dispensed from each facility, and associated emissions reductions and cost-effectiveness. The commission shall calculate a total cost-effectiveness of NO_x reductions from the vehicles that fuel at facilities funded from the Infrastructure Demonstration Program. This total cost-effectiveness shall include program funding provided to vehicles as well as funding provided from the Infrastructure Demonstration Program.

Article 7. Advanced Technology Development

44285. (a) From time to time, the commission shall issue specific requests for proposals (RFPs) or program opportunity notices (PONs) for technology proposals to be funded from the Advanced Technology Account. The first issuance of RFPs or PONs shall be no later than January 31, 2000. It is the intent of the Legislature that the technology grants be used to support development of emission-reducing technologies that could be used for projects eligible for funding pursuant to this chapter. It is also the intent of the Legislature that the technology grants be directed to a balanced mix of retrofit and add-on technologies to reduce emissions from the existing stock of targeted vehicles, as well as to advanced technologies for new engines and vehicles that produce very low or zero-NO_x emissions. The commission, in consultation with the state board, may also consider funding technology projects that would allow qualifying fuels, as defined in subdivision (d) of Section 44284, to be produced from California energy resources, with preference given to projects involving otherwise unusable California energy resources, at prices lower than prices otherwise available and low enough to make projects that would qualify for funding under the program economically attractive to local businesses. Not more than 20 percent of Advanced Technology Account funds may be directed to those qualifying fuel projects. Advanced technologies and any retrofit or add-on projects that provide multiple benefits by reducing emissions of particulates and other air pollutants should be given special consideration by the commission in soliciting proposals and determining how to allocate funds. At least 50 percent of the funds

available in the Advanced Technology Account shall be directed toward technologies that provide multiple benefits.

(b) Proposals involving technologies that allow onroad covered vehicles to replace with electric power the power normally supplied by the vehicles' internal combustion engine while the vehicle is parked shall be eligible for funding from the Advanced Technology Account if they meet all applicable criteria under this section.

(c) Technologies proposed for technology grants shall show clear and compelling evidence that the technology being funded has a strong commercialization plan and organization, is likely to be offered for commercial sale in California within five years of the application for funding, and that, once commercial, the technology will present opportunities for projects otherwise eligible for funding pursuant to this chapter. The commission shall specifically consider the projected NO_x reducing potential and cost-effectiveness of the commercialized technology, the potential for the technology to contribute in a significant way to air quality goals, and the strength of the commercialization plan.

(d) The commission may require cost sharing for technology projects, but shall not require repayment of funds granted.

(e) Proposals for projects involving either publicly owned or privately owned vehicles or vessels shall be eligible for technology awards.

(f) In developing RFPs and PONs and in evaluating proposals for funding, the commission shall consider that the primary objective of technology grants is to advance toward commercialization technologies that would support projects to be funded under the program.

Article 8. Program Administration: General

44286. (a) The responsibilities of the state board include management of program funds and program oversight. The state board is responsible for producing guidelines, protocols, and criteria for covered vehicle projects and developing methodologies for evaluating project cost-effectiveness in accordance with this chapter. The state board shall have primary responsibility for the reporting aspects of the program.

(b) The responsibilities of a district include local administration of project funds, monitoring funded projects, and reporting results to the state board, in accordance with this chapter. Any project funds awarded to a successful applicant shall be disbursed by the district.

(c) Relative to the allocation of funds in the south coast district, for purposes of this program, Mobile Source Air Pollution Reduction Review Committee funds shall only be used as matching funds upon approval, by minute action, of the Mobile Source Air Pollution Reduction Review Committee.

(d) The state board may reserve up to 10 percent of the program funds available each year to directly fund any project that is multidistrict in nature. A project that is multidistrict in nature shall be funded by the state board in coordination with the appropriate districts. The state board shall coordinate outreach efforts with a participating district to ensure that any parallel availability of a district grant and a grant from the state board is clear to an eligible applicant. Reserved funds not committed to a project funded directly by the state board by the end of the fiscal year shall be made available to the districts in the following year.

(e) The commission, in consultation with the state board, shall manage the Advanced Technology Account and the Infrastructure Demonstration Program in accordance with this chapter.

(f) The state board shall work closely with the commission and the districts for the duration of this program to maximize the ability of the program to achieve its goals.

(g) The state board and the districts shall take all appropriate and necessary actions to ensure that emissions reductions achieved through the program are credited by the United States Environmental Protection Agency to the appropriate emission reduction objectives in the State Implementation Plan.

44287. (a) The state board shall establish grant criteria and guidelines consistent with this chapter for covered vehicle projects as soon as practicable, but not later than January 1, 2000. The adoption of guidelines is exempt from 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 state board shall solicit input and comment from the districts during the development of the criteria and guidelines and shall make every effort to develop criteria and guidelines that are compatible with existing district programs that are also consistent with this chapter. Guidelines shall include protocols to calculate project cost-effectiveness. The grant criteria and guidelines shall include safeguards to ensure that the project generates surplus emissions reductions. Guidelines shall enable and encourage districts to cofund projects that provide emissions reductions in more than one district. The state board shall make draft criteria and guidelines available to the public 45 days before final adoption, and shall hold at least one public meeting to consider public comments before final adoption.

(b) The state board, in consultation with the participating districts, may propose revisions to the criteria and guidelines established pursuant to subdivision (a) as necessary to improve the ability of the program to achieve its goals. A proposed revision shall be made available to the public 45 days before final adoption of the revision and the state board shall hold at least one public meeting to consider public comments before final adoption of the revision.

(c) The state board shall reserve funds for, and disburse funds to, districts from the fund for administration pursuant to this section and Section 44299.1.

(d) The state board shall develop guidelines for a district to follow in applying for the reservation of funds, in accordance with this chapter. It is the intent of the Legislature that district administration of any reserved funds be in accordance with the project selection criteria specified in Sections 44281, 44282, and 44283 and all other provisions of this chapter. The guidelines shall be established and published by the state board as soon as practicable, but not later than January 1, 2000.

(e) Funds shall be reserved by the state board for administration by a district that adopts an eligible program pursuant to this chapter and offers matching funds at a ratio of one dollar ($1) of matching funds committed by the district or the Mobile Source Air Pollution Reduction Review Committee for every two dollars ($2) committed from the fund. Funds available to the Mobile Source Air Pollution Reduction Review Committee may be counted as matching funds for projects in the South Coast Air Basin only if the committee approves the use of these funds for matching purposes. Matching funds may be any funds under the district's budget authority that are committed to be expended in accordance with the program. Funds committed by a port authority or a local government, in cooperation with a district, to be expended in accordance with the program may also be counted as district matching funds. Matching funds provided by a port authority or a local government may not exceed 30 percent of the total required matching funds in any district that applies for more than three hundred thousand dollars ($300,000) of the state board funds. Only a district, or a port authority or a local government teamed with a district, may provide matching funds.

(f) Notwithstanding subdivision (e), a district need not provide matching funds for state board funds allocated to the district for program outreach activities pursuant to paragraph (4) of subdivision (a) of Section 44299.1.

(g) A district may include within its matching funds a reasonable estimate of direct or in-kind costs for assistance in providing program outreach and application evaluation. In-kind and direct matching funds shall not exceed 15 percent of the total matching funds offered by a district. A district may also include within its matching funds any money spent on or after February 25, 1999, that would have qualified as matching funds but were not previously claimed as matching funds.

(h) A district desiring a reservation of funds shall apply to the state board following the application guidelines established pursuant to this section. The state board shall approve or disapprove a district application not later than 60 days after receipt. Upon approval of any district application, the state board shall simultaneously approve a reservation of funding for that district to administer. Reserved funds

shall be disbursed to the district so that funding of a district-approved project is not impeded.

(i) Notwithstanding any other provision of this chapter, districts and the Mobile Source Air Pollution Reduction Review Committee shall not use funds collected pursuant to Section 41081 or Chapter 7 (commencing with Section 44220), or pursuant to Section 9250.11 of the Vehicle Code, as matching funds to fund a project with stationary or portable engines, locomotives, or marine vessels.

(j) Any funds reserved for a district pursuant to this section are available to the district for a period of not more than two years from the time of reservation. Funds not expended by June 30 of the second calendar year following the date of the reservation shall revert back to the state board as of that June 30, and shall be deposited in the Covered Vehicle Account established pursuant to Section 44299. The funds may then be redirected based on applications to the fund. Regardless of any reversion of funds back to the state board, the district may continue to request other reservations of funds for local administration. Each reservation of funds shall be accounted for separately, and unused funds from each application shall revert back to the state board as specified in this subdivision.

(k) The state board shall specify a date each year when district applications are due. If the eligible applications received in any year oversubscribe the available funds, the state board shall reserve funds on an allocation basis, pursuant to subdivision (b) of Section 44299.1. The state board may accept a district application after the due date for a period of months specified by the state board. Funds may be reserved in response to those applications, in accordance with this chapter, out of funds remaining after the original reservation of funds for the year.

(l) Guidelines for a district application shall require information from an applicant district to the extent necessary to meet the requirements of this chapter, but shall otherwise minimize the information required of a district.

(m) A district application shall be reviewed by the state board immediately upon receipt. If the state board determines that an application is incomplete, the applicant shall be notified within 10 working days with an explanation of what is missing from the application. A completed application fulfilling the criteria shall be approved as soon as practicable, but not later than 60 working days after receipt.

(n) The commission, in consultation with the districts, shall establish project approval criteria and guidelines for infrastructure projects consistent with Section 44284 as soon as practicable, but not later than February 15, 2000. The commission shall make draft criteria and guidelines available to the public 45 days before final adoption, and shall hold at least one public meeting to consider public comments before final adoption.

(o) The commission, in consultation with the participating districts, may propose revisions to the criteria and guidelines established pursuant to subdivision (n) as necessary to improve the ability of the program to achieve its goals. A revision may be proposed at any time, or may be proposed in response to a finding made in the annual report on the program published by the state board pursuant to Section 44295. A proposed revision shall be made available to the public 45 days before final adoption of the revision and the commission shall hold at least one public meeting to consider public comments before final adoption of the revision.

Article 9. Program Administration: Application Evaluation and Program Outreach

44288. (a) An application for a project grant shall be reviewed by the administering district immediately upon receipt. If the administering district determines that an application is incomplete, the applicant shall be notified within five working days with an explanation of what is missing from the application. The date and time of receipt of each application determined to be complete shall be recorded and the completed application shall be evaluated with respect to the appropriate project selection criteria. A district shall make every effort to process an application and grant an award rapidly and to coordinate project approval with any purchase or installation timing constraint on an applicant. Notwithstanding any other provision of this chapter, the administering district may determine that an application is not in good faith, not credible, or not in compliance with this chapter and its objectives.

(b) A participating district may request assistance from the state board on an as needed basis to clarify project evaluation protocols or to obtain information necessary to properly evaluate an application.

(c) An application for a grant for an infrastructure project shall be reviewed by the commission immediately upon receipt. If the commission determines that an application is incomplete, the applicant shall be notified within five working days with an explanation of what is missing from the application. The date and time of receipt of each application determined to be complete shall be recorded and the completed application shall be evaluated with respect to the appropriate project selection criteria. A complete grant application fulfilling the project selection criteria shall be approved as soon as practicable, but not later than 60 working days after receipt. Notwithstanding any other provision of this chapter, the commission may determine that an application is not in good faith, not credible, or not in compliance with this chapter and its objectives. The commission shall expedite the processing of an application and shall grant an award as rapidly as possible.

(d) Funds shall be awarded in conjunction with the execution of a contract that obligates the state board or a participating district to

make the grant and obligates the grantee to take the actions described in the grant application. A contract shall incorporate the recapturing provisions contained in subdivision (c) of Section 44291.

44290. The state board and participating districts shall institute an outreach program to inform potential participants, technology suppliers, vendors, engine and equipment dealers and distributors, fleet owners, industry organizations and publications, districts, and rail and port organizations of the availability of grants, and of the requirements and objectives of the grant program. The state board and district shall vigorously recruit grant applications and publish examples of successful projects. The commission shall work closely with the state board and districts so that infrastructure and technology development projects are closely coordinated with overall program implementation. Outreach efforts on the part of the state board shall be coordinated with district outreach efforts.

Article 10. Monitoring

44291. (a) The state board shall assist districts with developing procedures to monitor whether the emission reductions projected in successful grant applications are actually achieved. Monitoring procedures may include project audits, and may also include requirements, as part of the contract between the state board or districts and the grant recipients, that each grant recipient provide information about the project on an annual basis. Information required from grant recipients should be minimized and the format for reporting the information should be made simple and convenient.

(b) As soon as practicable, the commission, in consultation with the districts, shall publish procedures to monitor and audit infrastructure projects. These procedures shall ensure that the amount of qualifying fuel dispensed annually is greater than or equal to the amount upon which the grant award is based and that any project qualifying for funding on the basis of public accessibility or limited public accessibility is, in fact, providing that accessibility.

(c) The monitoring and auditing procedures shall be sufficient to allow emission reductions generated to be fully credited to air quality plans. The monitoring procedures shall contain provisions for recapturing grant awards in proportion to any loss of emission reductions or underachievement in dispensing qualifying fuel compared with the reductions and fuel dispensing projected in the grant application. Funds recaptured shall be deposited in the accounts from which the funds were originally expended. From time to time, monitoring and auditing procedures shall be revised as appropriate to enhance program effectiveness.

(d) The state board shall monitor district programs to ensure that participating districts conduct their programs consistent with the criteria and guidelines established by the state board and the commission pursuant to this chapter. The monitoring procedures

shall contain provisions for recapture of funds not yet awarded to approved projects if a district fails to show that they are implementing a program consistent with the approved program. If the state board determines, pursuant to this subdivision, that moneys from the fund allocated to a district should be recaptured, the state board shall hold at least one public meeting to consider public comments prior to recapturing the allocated funds. The state board shall make every effort to assist districts to implement programs in an approved manner and shall only recapture allocated funds if these efforts fail to address problems adequately. Recaptured funds shall be deposited in the Covered Vehicle Account. The state board shall not recapture funds already awarded to approved projects.

Article 11. Reporting

44295. (a) Not later than March 1, 2001, and each March 1 thereafter, through March 1, 2003, the state board in cooperation with participating districts, and assisted by the commission with regard to projects funded from the Infrastructure Demonstration Program and the Advanced Technology Account, shall publish, and notwithstanding Section 7550.5 of the Government Code, provide the Legislature with, a program report. The report shall describe each covered vehicle project funded by the state board and by districts that have received funds pursuant to this chapter, the amount granted for the project, and the emission reductions obtained and the cost-effectiveness of the project. For projects funded from the Advanced Technology Account, the report shall describe the technical objectives and accomplishments of the project, and the progress of the technology toward commercialization. For projects funded from the Infrastructure Demonstration Program, the report shall describe whether the funding has been critical to supplying qualifying fuel and supporting vehicles that reduce NO_x emissions in California, shall include a discussion of demonstration program cost-effectiveness pursuant to subdivision (j) of Section 44284, and shall make a finding as to the need for additional moneys to be appropriated from the fund to the Infrastructure Demonstration Program in order to improve the ability of the program to achieve its goals.

(b) The report shall detail funds received, funds granted, funds reserved for grants based on project approvals, district matching funds and the sources of those funds, and any recommended transfer of funds between accounts, and shall estimate future demand for grant funds.

(c) The report shall describe the overall effectiveness of the program in delivering the emission reductions required by air quality plans, including rate of progress plans and milestone and conformity tests, as well as attainment and maintenance plans. The report shall evaluate the effectiveness of the program in soliciting and evaluating

project applications, providing awards in a timely manner, and monitoring project implementation. The report shall describe any adjustments made to the project selection criteria and recommend any further needed changes or adjustments to the grant program, including changes in grant award criteria, administrative procedures, or statutory provisions that would enhance the effectiveness and efficiency of the grant program.

(d) The state board shall request comments and hold public meetings on each draft annual report to obtain public comments. The state board shall consider and respond to all significant comments received in producing a final annual report.

(e) A final annual report shall be published within 90 days from the date of publication of each draft annual report.

Article 12. Disposition of Funds

44296. (a) All program funds shall be encumbered prior to January 1, 2002. No grants shall be made by districts using money reserved within the fund after that date, and no technology or infrastructure project may be funded by the commission after that date.

(b) On January 1, 2002, all unencumbered funds reserved for districts shall revert back to the state board, and thereafter shall be permanently allocated by the state board to districts in proportion to the aggregate net disbursements that the participating districts received during the life of the grant program, to be used in accordance with the goals and objectives of the grant program and to be granted by the districts in accordance with the procedures and criteria in place at the termination of the grant program or as subsequently modified by the districts as needed to better meet the grant program objectives and protect human health and welfare.

(c) Notwithstanding subdivision (b), the advisory board may recommend that unused funds be allocated to fund a continuing statewide program similar to the program established as part of the advisory board recommendations for a continuing program pursuant to Section 44297.

(d) Notwithstanding any provision in the Budget Act of 1999, funds appropriated in that act to carry out the provisions of this act shall only be available for encumbrance during the 1999–2000 fiscal year.

Article 13. Continuing Program Recommendation

44297. (a) Not later than January 15, 2000, the state board, in cooperation with participating districts, shall prepare a report on the implementation, to date, of the diesel emissions incentives program funded under the Budget Act of 1998. Notwithstanding Section 7550.5 of the Government Code, the state board shall submit the report to

the Governor, the Legislature, and the advisory board. The report shall describe district efforts to implement the existing program and provide an overview of the types of project applications received. The report shall assess the need for emission reductions and incentive programs relative to the state implementation plan, and the potential for emission reductions with continued funding, and shall assess whether the program should be continued and funded in the future. The report shall also identify and inventory all available state and local funds that may be utilized in carrying out a continuing program including, but not necessarily limited to, county district vehicle registration funding, air pollution penalties from diesel and other air quality violations, funds from the High Polluter Repair or Removal Account, created pursuant to subdivision (a) of Section 44091, that are not expected to be utilized for low-income repair assistance, and funds received from the federal government pursuant to the Congestion Management and Air Quality program. The report shall also analyze the possible use of mitigation fees, alternative settlements for compliance with state air quality and environmental protection laws and regulations, contributions by users of diesel equipment, and funds resulting from the mitigation of adverse environmental impacts of transportation projects.

(b) The Carl Moyer Program Advisory Board is hereby created in state government for purposes of assessing implementation of the program and determining whether the program should continue to be funded. The advisory board shall have the following specified responsibilities:

(1) To review the report prepared by the state board pursuant to subdivision (a) on program implementation.

(2) To hold a public hearing on the need for a continuing program.

(3) Notwithstanding Section 7550.5 of the Government Code, to prepare a report and submit it to the Legislature and the Governor on or before March 31, 2000. The report may recommend a continuing program, similar to the program established by this chapter, that will make a significant contribution toward attaining air quality standards in California. The report shall recommend revenue sources for funding financial incentives, together with any legislative or budget action needed to implement a continuing program.

(c) The advisory board shall consist of 13 members. Four of the members shall be public members. Two public members shall be appointed by the Senate Committee on Rules, and two public members shall be appointed by the Speaker of the Assembly. The Secretary for Environmental Protection shall appoint the following nine members:

(1) The executive officer of the state board.

(2) One member of the commission.

(3) One representative of the heavy-duty trucking industry.

(4) One representative of the agricultural industry.

(5) One representative of the construction industry.

(6) One representative from the locomotive industry.
(7) One representative from the marine industry.
(8) One representative of a regional transportation agency.
(9) One member of a public interest environmental organization.

(d) The executive officer of the state board shall serve as the chairperson of the advisory committee

(e) The advisory board may appoint ex officio officers.

(f) The advisory board may request assistance from the state board and the commission for administrative services and staff support, and these agencies may provide these services, to the extent they determine it is feasible, within existing budgetary resources.

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

Article 14. Funds

44299. (a) The Carl Moyer Memorial Air Quality Standards Attainment Trust Fund is hereby created in the State Treasury. The Controller shall transfer any unencumbered funds appropriated to the commission or the state board for the diesel emissions reduction incentive program by Items 3360-001-0314 and 3900-001-0001 of Section 2.00 of the Budget Act of 1998 (Ch. 324, Stats. 1998), and Items 3360-001-0314, 3360-001-0001, 3360-001-0465, 3900-001-0001, and 3900-001-0115 of Section 2.00 of the Budget Act of 1999 (Ch. 50, Stats. 1999), to the trust fund. The money in the trust fund shall be available upon appropriation by the Legislature to carry out the purposes of this chapter.

(b) To ensure that emission reductions are obtained as needed from air pollution sources, the following accounts are hereby created in the trust fund:

(1) The Covered Vehicle Account.
(2) The Advanced Technology Account.

(c) Notwithstanding Sections 16475, 16475.1, and 16480.6 of the Government Code, all of the interest earned on money in the trust fund shall be deposited in the trust fund.

44299.1. (a) To ensure that emission reductions are obtained as needed from pollution sources, any money deposited in or appropriated to the fund shall be segregated and administered as follows:

(1) Ten percent, not to exceed two million dollars ($2,000,000), shall be allocated to the Infrastructure Demonstration Project to be used pursuant to Section 44284.

(2) Ten percent shall be deposited in the Advanced Technology Account to be used to support research, development, demonstration, and commercialization of advanced low-emission technologies for covered sources that show promise of contributing to the goals of the program.

(3) Not more than 2 percent of the moneys in the fund shall be allocated to program support and outreach costs incurred by the state board and the commission directly associated with implementing the program pursuant to this chapter. These funds shall be allocated to the state board and the commission in proportion to total program funds administered by the state board and the commission.

(4) Not more than 2 percent of the moneys in the fund shall be allocated to direct program outreach activities. The state board may use these funds for program outreach contracts or may allocate outreach funds to participating air districts in proportion to each district's allocation from the Covered Vehicle Account. The state board shall report on the use of outreach funds in their reports to the Legislature pursuant to Section 44295.

(5) The balance shall be deposited in the Covered Vehicle Account to be expended to offset added costs of new very low or zero-emission vehicle technologies, and emission reducing repowers, retrofits, and add-on equipment for covered vehicles and engines.

(b) Funds in the Covered Vehicle Account shall be allocated to a district that submits an eligible application to the state board pursuant to Section 44287. The state board shall determine the maximum amount of annual funding from the Covered Vehicle Account that each district may receive. This determination shall be based on the population in each district as well as the relative importance of obtaining NO_x reductions in each district, specifically through the program.

SEC. 3. (a) It is the intent of the Legislature that funds appropriated to the State Energy Resources Conservation and Development Commission for the Diesel Emissions Incentive Program pursuant to Item 3360-001-0001 of Section 2.00 of the Budget Act of 1999 are to be encumbered for the support of the Carl Moyer Memorial Air Quality Standards Attainment Program as follows:

(1) Two million dollars ($2,000,000) for Advanced Technology Development grants awarded pursuant to Article 7 (commencing with Section 44285) of Chapter 9 of Part 5 of Division 26 of the Health and Safety Code.

(2) Two million dollars ($2,000,000) for the Infrastructure Demonstration Program described in Article 6 (commencing with Section 44284) of Chapter 9 of Part 5 of Division 26 of the Health and Safety Code.

(b) Funds specified in subdivision (a), and any other funds appropriated during the 1999–2000 fiscal year to the State Energy Resources Conservation and Development Commission for support of the Carl Moyer Memorial Air Quality Standards Attainment Program, may be used for any of the following purposes:

(1) Grants.

(2) Loans.

(3) Contracts.

(4) Technical support.

(c) Any unencumbered funds appropriated to the State Air Resources Board for the diesel emissions reduction incentive program by the Budget Act of 1998 and the Budget Act of 1999, other than those funds listed in the items in subdivision (a) of Section 44299, shall be transferred by the Controller to the Carl Moyer Memorial Air Quality Standards Attainment Trust Fund for the support of the Carl Moyer Air Quality Standards Attainment Program.

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 begin the implementation of a program to achieve reductions in air pollution emissions that adversely affect public health and the environment, and that are required to be achieved by the State Implementation Plan pursuant to federal law as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 924

An act to add and repeal Section 56657 of the Government Code, relating to local government, and making an appropriation therefor.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 56657 is added to the Government Code, to read:

56657. (a) The sum of three hundred twenty thousand dollars ($320,000) is hereby appropriated from the General Fund to the Local Agency Formation Commission of the County of Los Angeles for the purpose of conducting a study to determine whether it is feasible for the Harbor Area, consisting of the communities of San Pedro, Wilmington, and Harbor City, to detach from the City of Los Angeles and to incorporate as a new city.

(b) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

CHAPTER 925

An act to add Section 101087 to the Health and Safety Code, relating to environmental protection.

[Approved by Governor October 9, 1999. Filed with
Secretary of State October 10, 1999.]

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

SECTION 1. Section 101087 is added to the Health and Safety Code, to read:

101087. (a) For purposes of this section, the terms "handler," "administering agency," "hazardous material," "release," and "threatened release" shall have the meaning given in Section 25501.

(b) After a release or a threatened release of a hazardous material from the premises of a handler, which release or threatened release poses a significant present or potential hazard to human health and safety, property, or the environment, the board of supervisors may delegate to the county health officer or administering agency, the responsibility to examine any individual who has been properly subpoenaed by the chairperson of the board of supervisors for the purpose of obtaining information as to the cause of the incident, and to report to the board of supervisors what actions the board of supervisors should take to prevent a similar incident from occurring again. The county health officer or administering agency shall consider in the report any information obtained pursuant to subdivision (g) and respond to that information in the report. The county health officer or administering agency may examine the subpoenaed individual in private, except that the individual may choose to be interviewed in the presence of personal legal counsel.

(c) Prior to issuing a subpoena for purposes of subdivision (b), the board of supervisors shall make a written finding that the county health officer or administering agency has made a reasonable attempt to conduct a voluntary examination, and that the attempt was not successful.

(d) If the board of supervisors delegates the responsibility to examine any subpoenaed individual to the county health officer pursuant to subdivision (b) and the county health officer is not the administering agency within the jurisdiction where the hazardous material release or threatened release occurred, the county health officer shall actively involve the administering agency in all phases of the examination, the investigation to determine the cause of the hazardous material release or threatened release, and the preparation of the report to the board of supervisors concerning what actions the board of supervisors should take to prevent a similar incident from occurring.

(e) (1) If a handler subject to a subpoena believes that information provided to the county health officer or administering agency during, or in connection with, an examination conducted pursuant to this section involves the release of a trade secret, the handler shall notify the county health officer or administering agency in the manner specified in subdivision (a) of Section 25538. Upon

receipt of that notification, the county health officer or administering agency shall handle that information in the same manner as specified in Section 25538 with regard to the review and disclosure of that information by an administering agency.

(2) For purposes of this subdivision, "trade secret" has the same meaning as defined in subdivision (a) of Section 25538.

(f) When the county health officer or administering agency is preparing a report for the board of supervisors pursuant to subdivision (b), the handler subject to the subpoena may submit to the health officer or administering agency any information and analysis gathered or prepared by the handler regarding the cause of the release or threatened release and any appropriate action for the prevention of a similar incident. The health officer or administering agency shall consider any information and analyses submitted by the handler pursuant to this subdivision in preparing the report to the board of supervisors and shall respond to that information in the report.

(g) Nothing in this section shall be construed to either limit or expand the existing subpoena authority of a county board of supervisors pursuant to Section 25170 of the Government Code.

CHAPTER 926

An act to amend Section 19817 of, to add Sections 19827.3 and 19849.15 to, and to add Article 2.2 (commencing with Section 19817.10) to Chapter 1 of Part 2.6 of Division 5 of Title 2 of, the Government Code, relating to state employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. 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 16.

SEC. 2. Article 2.2 (commencing with Section 19817.10) is added to Chapter 1 of Part 2.6 of Division 5 of Title 2 of the Government Code, to read:

Article 2.2. Administrative Procedure

19817.10. (a) This article shall apply only to employees in state bargaining units who have agreed to this article in a memorandum of understanding.

(b) The Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3) shall not apply to any agreements, orders, standards of general application, or any other directives or guidance entered into or issued by the department concerning matters that are within the scope of collective bargaining as defined by Section 3516. This article shall not in any way diminish the state's obligation to meet and confer with recognized employee organizations regarding matters within the scope of bargaining as defined by Section 3516.

(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 those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not be effective unless approved by the Legislature in the annual Budget Act.

SEC. 3. Section 19827.3 is added to the Government Code, to read:

19827.3. In order for the state to recruit skilled firefighters for the California Department of Forestry and Fire Protection, it is the policy of the state to consider prevailing salaries and benefits prior to making salary recommendations. In order to provide comparability in pay, the Department of Personnel Administration shall take into consideration the salary and benefits of other jurisdictions employing 75 full-time firefighters or more who work in California.

SEC. 4. Section 19849.15 is added to the Government Code, to read:

19849.15. (a) Notwithstanding Section 22777, the state employer shall, upon the death of an employee while in state service, continue to pay employer contributions for health, dental, and vision benefits for a period not to exceed 120 days beginning in the month of the employee's death. The surviving spouse or other eligible family member shall be advised of all rights and obligations during this period regarding the continuation of health and dental benefits as an annuitant by the California Public Employees' Retirement System. The surviving spouse or other eligible family member shall also be notified by the department during this period regarding COBRA rights for the continuation of vision benefits.

(b) This section shall apply to state employees in state bargaining units that have agreed to this section in a memorandum of understanding, state employees excluded from the definition of "state employee" in subdivision (c) of Section 3513, and officers or employees of the executive branch of state government who are not members of the civil service.

SEC. 5. The provisions of the memorandum of understanding prepared pursuant to Section 3517.5 of the Government Code and entered into by the state employer and the California Department

of Forestry Employees Association, and that require the expenditure of funds or legislative action to permit their implementation, are hereby approved for the purposes of Section 3517.6 of the Government Code.

SEC. 6. Provisions of the memorandum of understanding approved by Section 5 of this act that are scheduled to take effect on or after July 1, 1999, and that require the expenditure of funds shall not take effect unless funds for these provisions are specifically appropriated by the Legislature. In the event that funds for these provisions are not specifically appropriated by the Legislature, the state employer and the affected employee organization shall meet and confer to renegotiate the affected provisions.

SEC. 7. 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. 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 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 927

An act to amend Sections 214 and 254.5 of, and to add Section 214.15 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation, including ad valorem taxes to pay the interest and redemption charges on any indebtedness approved by the voters prior to July 1, 1978, or any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978,

by two-thirds of the votes cast by the voters voting on the proposition, if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit if, during the immediately preceding fiscal year, operating revenues, exclusive of gifts, endowments and grants-in-aid, did not exceed operating expenses by an amount equivalent to 10 percent of those operating expenses. As used herein, operating expenses include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization that meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the organization, are not subject to the tax on unrelated business taxable income that is imposed by Section 511 of the Internal Revenue Code, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) "Occasional use" means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph (A) that is incidental to the primary activities of the owner or the other organization.

(ii) "Fundraising activities" means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the property and any other organization using the property as provided in subparagraph (A) have filed with the assessor duplicate copies of valid unrevoked letters or rulings from the Internal Revenue Service

that state that the owner and the other organization qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code. The owner of the property and any other organization using the property as provided in subparagraph (A) also shall file duplicate copies of their most recently filed federal income tax returns.

(D) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to the use of the property for meetings conducted by any other organization if the meetings are incidental to the other organization's primary activities, are not fundraising meetings or activities as defined in subparagraph (B), are held no more than once per week, and the other organization and its use of the property meet all other requirements of paragraphs (1) to (5), inclusive, of subdivision (a). The owner or the other organization also shall file with the assessor duplicate copies of valid, unrevoked letters or rulings from the Internal Revenue Service or the Franchise Tax Board stating that the other organization, or the national organization of which it is a local chapter or affiliate, qualifies as an exempt organization under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code or Section 23701d, 23701f, or 23701w, together with duplicate copies of that organization's most recently filed federal income tax return, if the organization is required by federal law to file a return.

Nothing in subparagraph (A), (B), (C), or (D) shall be construed to either enlarge or restrict the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution that, in addition to complying with the foregoing requirements for the exemption of charitable organizations in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the

scientific purposes are medical research), and whose objects are the encouragement or conduct of scientific investigation, research, and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the "welfare exemption." This exemption shall be in addition to any other exemption now provided by law, and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station, and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

The amendment of this paragraph made by Chapter 1102 of the Statutes of 1984 does not constitute a change in, but is declaratory of, the existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or that is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property that would otherwise be exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property that is equal to the percentage that the number of low- and moderate-income elderly and handicapped families occupying the property represents of the total number of families occupying the property.

As used in this subdivision, "low and moderate income" has the same meaning as the term "persons and families of low or moderate income" as defined by Section 50093 of the Health and Safety Code.

(g) (1) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations, including limited partnerships in which the managing general partner is an eligible

nonprofit corporation, meeting all of the requirements of this section, or by veterans' organizations, as described in Section 215.1, meeting all the requirements of paragraphs (1) to (7), inclusive, of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property that the portion of the property serving lower income households represents of the total property in any year in which either of the following criteria applies:

(A) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

(2) In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) Certify and ensure that there is an enforceable and verifiable agreement with a public agency or, a recorded deed restriction, that restricts the project's usage and that provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents that do not exceed those prescribed by the terms of the financing or financial assistance.

(B) Certify that the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

(3) As used in this subdivision, "lower income households" has the same meaning as the term "lower income households" as defined by Section 50079.5 of the Health and Safety Code.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property that otherwise would be exempt pursuant to this subdivision, except that it includes

housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, "emergency or temporary shelter" means a facility that would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations that meet all the requirements of subdivision (a) and owned and operated by funds, foundations, or corporations that meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

(j) For purposes of this section, charitable purposes include educational purposes. For purposes of this subdivision, "educational purposes" means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and shall not include those educational purposes and activities that are primarily for the benefit of an organization's shareholders. Educational activities include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

SEC. 2. Section 214.15 is added to the Revenue and Taxation Code, to read:

214.15. (a) Property is within the exemption provided by Sections 4 and 5 of Article XIII of the California Constitution if that property is owned and operated by a nonprofit corporation, otherwise qualifying for exemption under Section 214, that is organized and operated for the specific and primary purpose of building and rehabilitating single or multifamily residences for sale at cost to low-income families, with financing in the form of a zero interest rate loan and without regard to religion, race, national origin, or the sex of the head of household.

(b) (1) In the case of property not previously designated as open space, the exemption specified by subdivision (a) may not be denied to a property on the basis that the property does not currently include a single or multifamily residence as described in that subdivision, or a single or multifamily residence as so described that is in the course of construction.

(2) With regard to paragraph (1), the Legislature finds and declares all of the following:

(A) The exempt activities of a nonprofit corporation as described in subdivision (a) qualitatively differ from the exempt activities of other nonprofit entities that provide housing in that the exempt purpose of a nonprofit corporation as described in subdivision (a) is

not to own and operate a housing project on an ongoing basis, but is instead to make housing, and the land reasonably necessary for the use of that housing, available for prompt sale to low-income residents.

(B) In light of this distinction, the holding of real property by a nonprofit corporation as described in subdivision (a), for the future construction on that property of a single or multifamily residence as described in that same subdivision, is central to that corporation's exempt purposes and activities.

(C) In light of the factors set forth in subparagraphs (A) and (B), the holding of real property by a nonprofit corporation described in subdivision (a), for the future construction on that property of a single or multifamily residence as described in that same subdivision, constitutes the exclusive use of that property for a charitable purpose within the meaning of subdivision (b) of Section 4 of Article XIII of the California Constitution.

SEC. 3. Section 254.5 of the Revenue and Taxation Code is amended to read:

254.5. (a) Affidavits for the welfare exemption and the veterans' organization exemption shall be filed in duplicate on or before February 15 of each year with the assessor. Affidavits of organizations filing for the first time shall be accompanied by duplicate certified copies of the financial statements of the owner and operator. Thereafter, financial statements shall be submitted only if requested in writing by either the assessor or the board. Copies of the affidavits and financial statements shall be forwarded not later than April 1 by the assessor with his or her recommendations for approval or denial to the board which shall review all the affidavits and statements and may institute an independent audit or verification of the operations of the owner and operator to ascertain whether both the owner and operator meet the requirements of Section 214 of the Revenue and Taxation Code. In this connection the board shall consider, among other matters, whether:

(1) The services and expenses of the owner or operator (including salaries) are excessive, based upon like services and salaries in comparable public institutions.

(2) The operations of the owner or operator, either directly or indirectly, materially enhance the private gain of any individual or individuals.

(3) Any capital investment of the owner or operator for expansion of physical plant is justified by the contemplated return thereon, and required to serve the interests of the community.

(4) The property on which exemption is claimed is used for the actual operation of an exempt activity and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(b) The board shall make a finding as to the eligibility of each applicant and the applicant's property and shall forward its finding to the assessor concerned. In a case where the board conducts a

hearing with respect to the eligibility of the applicant and the applicant's property, the finding shall be forwarded to the assessor concerned within 30 days after the decision is made by the board following the hearing. The assessor may deny the claim of an applicant the board finds eligible but may not grant the claim of an applicant the board finds ineligible.

(c) Notwithstanding subdivision (a), an applicant, granted a welfare exemption and owning any property exempted pursuant to Section 214.15 or Section 231, shall not be required to reapply for the welfare exemption in any subsequent year in which there has been no transfer of, or other change in title to, the exempted property and the property is used exclusively by a governmental entity or by a nonprofit corporation described in Section 214.15 for its interest and benefit. The applicant shall notify the assessor on or before March 15 if, on or before the preceding lien date, the applicant became ineligible for the welfare exemption or if, on or before that lien date, the property was no longer owned by the applicant or otherwise failed to meet all requirements for the welfare exemption.

Prior to the lien date, the assessor shall annually mail a notice to every applicant relieved of the requirement of filing an annual application by this subdivision.

The notice shall be in a form and contain that information that the board may prescribe, and shall set forth the circumstances under which the property may no longer be eligible for exemption and advise the applicant of the duty to inform the assessor if the property is no longer eligible for exemption.

The notice shall include a card that is to be returned to the assessor by any applicant desiring to maintain eligibility for the welfare exemption under Section 214.15 or Section 231. The card shall be in the following form:

To all persons who have received a welfare exemption under Section 214.15 or Section 231 of the Revenue and Taxation Code for the _____ fiscal year.

Question: Will the property to which the exemption applies in the _____ fiscal year continue to be used exclusively by government or by an organization as described in Section 214.15 for its interest and benefit in the _____ fiscal year?

YES _____ NO _____

Signature: _____

Title: _____

Failure to return this card does not of itself constitute a waiver of exemption as called for by the California Constitution, but may result in onsite inspection to verify exempt activity.

(d) Upon any indication that a welfare exemption has been incorrectly granted, the assessor shall redetermine eligibility for the exemption. If the assessor determines that the property, or any portion thereof, is no longer eligible for the exemption, he or she shall immediately cancel the exemption on so much of the property as is no longer eligible for the exemption.

(e) If a welfare exemption has been incorrectly allowed, an escape assessment as provided by Article 4 (commencing with Section 531) of Chapter 3 in the amount of the exemption, with interest as provided in Section 506, shall be made, and a penalty shall be assessed for any failure to notify the assessor as required by this section in an amount equaling 10 percent of the escape assessment, but in no event exceeding two hundred fifty dollars ($250).

SEC. 4. The addition of subdivision (a) of Section 214.15 of the Revenue and Taxation Code by this act does not constitute a change in, but is declaratory of, existing law.

SEC. 5. 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. 6. 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 apply on and after the property tax lien date on January 1, 2000.

CHAPTER 928

An act to add Sections 20508.1 and 20583.1 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 20508.1 is added to the Revenue and Taxation Code, to read:

20508.1. For purposes of Section 20508, "residential dwelling" includes floating homes.

SEC. 2. Section 20583.1 is added to the Revenue and Taxation Code, to read:

20583.1. For purposes of Section 20583, "residential dwelling" includes houseboats and floating homes.

CHAPTER 929

An act to add Section 15620.5 to the Government Code, and to amend Sections 8262, 8269, 9262, 9269, 9275, 30458.2, 30458.9, 30459.5, 32462, 32469, 32475, 38621, 40202, 40209, 40215, 41162, 41169, 41175, 43513, 43520, 43526, 45858, 45865, 45871, 46613, 46620, 46626, 50112.2, 50156.2, 50156.9, 50156.15, 55323, 55330, 55336, 60623, and 60630 of, and to add Sections 6832.5, 6902.4, 7658.1, 8174, 8878.5, 9033, 9184, 9272.1, 11253, 11254, 11409, 30283.5, 30354, 30384, 30459.2A, 32256.5, 32389, 32432, 32472.1, 38455, 38504, 38505, 38624, 40103.5, 40167, 40212.5, 41097.5, 41127.6, 41172.5, 43158.5, 43448, 43484, 43523.5, 45156.5, 45609, 45752, 45868.5, 46157.5, 46464, 46544, 46623.5, 50112.4, 50138.6, 50150.5, 50156.17, 55046, 55209, 55262, 55333.5, 60212, 60493, 60564, 60632.1, 60633.1, and 60633.2 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 15620.5 is added to the Government Code, to read:

15620.5. The board, whenever it deems it necessary to ensure voluntary compliance with the due dates prescribed by law for submission of any remittance, claim for credit or refund, document, return, or other information delivered to the board through the United States mail or through a bona fide commercial delivery service, may establish a uniform policy for the acceptance of the remittance, claim for credit or refund, document, return, or other information in cases where the cancellation mark stamped upon the envelope containing the remittance, claim for credit or refund, document, return, or other information shows a date after the date specified in law. This policy shall not be construed as an extension of the prescribed time limits for remitting payments, filing claims for refund or credit, submitting documents, returns, or other information.

SEC. 1.5. Section 6832.5 is added to the Revenue and Taxation Code, to read:

6832.5. On or before July 1, 2000, the board shall provide each taxpayer who has an installment payment agreement in effect under Section 6832 with an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

SEC. 1.7. Section 6902.4 is added to the Revenue and Taxation Code, to read:

6902.4. (a) The limitation period specified in Section 6902 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that, without regard to this section, is barred by operation or rule of law, including res judicata, as of the effective date of the act adding this section.

SEC. 1.9. Section 7658.1 is added to the Revenue and Taxation Code, to read:

7658.1. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 7655 and 7661 where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the distributor.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 2. Section 8174 is added to the Revenue and Taxation Code, to read:

8174. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 8171, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 8171 on or after January 1, 2000.

SEC. 3. Section 8262 of the Revenue and Taxation Code is amended to read:

8262. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

SEC. 4. Section 8269 of the Revenue and Taxation Code is amended to read:

8269. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the

amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 5. Section 8878.5 is added to the Revenue and Taxation Code, to read:

8878.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 8803 and 8876 where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 6. Section 9033 is added to the Revenue and Taxation Code, to read:

9033. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

SEC. 7. Section 9184 is added to the Revenue and Taxation Code, to read:

9184. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 9181, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 9181 on or after January 1, 2000.

SEC. 8. Section 9262 of the Revenue and Taxation Code is amended to read:

9262. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

SEC. 9. Section 9269 of the Revenue and Taxation Code is amended to read:

9269. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 10. Section 9272.1 is added to the Revenue and Taxation Code, to read:

9272.1. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 9033 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 9274.

SEC. 11. Section 9275 of the Revenue and Taxation Code is amended to read:

9275. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event

tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 8826) of Chapter 4.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

SEC. 12. Section 11253 is added to the Revenue and Taxation Code, to read:

11253. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

SEC. 13. Section 11254 is added to the Revenue and Taxation Code, to read:

11254. Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(a) The levy on the property was not in accordance with the law.

(b) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 11253 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(c) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

SEC. 14. Section 11409 is added to the Revenue and Taxation Code, to read:

11409. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Section 11319 where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if the person filed a timely report and no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 15. Section 30283.5 is added to the Revenue and Taxation Code, to read:

30283.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 30171, 30223, and 30281 where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 16. Section 30354 is added to the Revenue and Taxation Code, to read:

30354. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

SEC. 17. Section 30384 is added to the Revenue and Taxation Code, to read:

30384. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 30381, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 30381 on or after January 1, 2000.

SEC. 18. Section 30458.2 of the Revenue and Taxation Code is amended to read:

30458.2. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

SEC. 19. Section 30458.9 of the Revenue and Taxation Code is amended to read:

30458.9. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fees and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the state was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 20. Section 30459.2A is added to the Revenue and Taxation Code, to read:

30459.2A. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall

be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 30354 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) shall be subject to the provisions of Section 30459.4.

SEC. 21. Section 30459.5 of the Revenue and Taxation Code is amended to read:

30459.5. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 30241) of Chapter 4.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

SEC. 22. Section 32256.5 is added to the Revenue and Taxation Code, to read:

32256.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 32254 and 32291 where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 23. Section 32389 is added to the Revenue and Taxation Code, to read:

32389. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

SEC. 24. Section 32432 is added to the Revenue and Taxation Code, to read:

32432. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 32431, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 32431 on or after January 1, 2000.

SEC. 25. Section 32462 of the Revenue and Taxation Code is amended to read:

32462. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

SEC. 26. Section 32469 of the Revenue and Taxation Code is amended to read:

32469. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 27. Section 32472.1 is added to the Revenue and Taxation Code, to read:

32472.1. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 32389 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 32474.

SEC. 28. Section 32475 of the Revenue and Taxation Code is amended to read:

32475. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 5 (commencing with Section 32311) of Chapter 6.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

SEC. 29. Section 38455 is added to the Revenue and Taxation Code, to read:

38455. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 38412, 38423, 38432, and 38451 where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if the person filed a timely report and no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 30. Section 38504 is added to the Revenue and Taxation Code, to read:

38504. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

SEC. 31. Section 38505 is added to the Revenue and Taxation Code, to read:

38505. Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(a) The levy on the property was not in accordance with the law.

(b) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 38504 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(c) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

SEC. 32. Section 38621 of the Revenue and Taxation Code is amended to read:

38621. (a) The Controller may recover any refund or part thereof that is erroneously made and any credit or part thereof that is erroneously allowed in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made and any credit or part thereof that is erroneously allowed pursuant to this part. In recovering any erroneous refunds or credits, the board, in its discretion, may issue a deficiency determination in accordance with Article 2 (commencing with Section 38411) or Article 4 (commencing with Section 38431) of Chapter 5. Except in the case of fraud, the determination shall be made within three years from the date of the Controller's warrant or date of credit.

SEC. 32.5. Section 38624 is added to the Revenue and Taxation Code, to read:

38624. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 38621, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 38621 on or after January 1, 2000.

SEC. 33. Section 40103.5 is added to the Revenue and Taxation Code, to read:

40103.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 40083 and 40101 where the failure to pay the surcharge is due in whole or in part to

an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the person liable for the surcharge.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on surcharge liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 34. Section 40167 is added to the Revenue and Taxation Code, to read:

40167. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any surcharges due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the person liable for the surcharge may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the surcharge, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of surcharge, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

SEC. 35. Section 40202 of the Revenue and Taxation Code is amended to read:

40202. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer education materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

SEC. 36. Section 40209 of the Revenue and Taxation Code is amended to read:

40209. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 37. Section 40212.5 is added to the Revenue and Taxation Code, to read:

40212.5. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be

returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 40167 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 40214.

SEC. 38. Section 40215 of the Revenue and Taxation Code is amended to read:

40215. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(c) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(d) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

SEC. 39. Section 41097.5 is added to the Revenue and Taxation Code, to read:

41097.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 41082 and 41095 where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 40. Section 41127.6 is added to the Revenue and Taxation Code, to read:

41127.6. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

SEC. 41. Section 41162 of the Revenue and Taxation Code is amended to read:

41162. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or the Controller.

SEC. 42. Section 41169 of the Revenue and Taxation Code is amended to read:

41169. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 43. Section 41172.5 is added to the Revenue and Taxation Code, to read:

41172.5. (a) If any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 41127.5 to satisfy

the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 41174.

SEC. 44. Section 41175 of the Revenue and Taxation Code is amended to read:

41175. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(c) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(d) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

SEC. 45. Section 43158.5 is added to the Revenue and Taxation Code, to read:

43158.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Section 43156 and may relieve all or any part of the interest imposed on a person by Section 43201 where the deficiency determination is made because no return was filed or payment of the fee was not made timely, where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on

which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 46. Section 43448 is added to the Revenue and Taxation Code, to read:

43448. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

SEC. 47. Section 43484 is added to the Revenue and Taxation Code, to read:

43484. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 43481, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 43481 on or after January 1, 2000.

SEC. 48. Section 43513 of the Revenue and Taxation Code is amended to read:

43513. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance of inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

SEC. 49. Section 43520 of the Revenue and Taxation Code is amended to read:

43520. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fees and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 50. Section 43523.5 is added to the Revenue and Taxation Code, to read:

43523.5. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 43448 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 43525.

SEC. 51. Section 43526 of the Revenue and Taxation Code is amended to read:

43526. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 5 (commencing with Section 43350) of Chapter 3.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the

collection of the tax liability or will be in the best interest of the state and the taxpayer.

SEC. 52. Section 45156.5 is added to the Revenue and Taxation Code, to read:

45156.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Section 45154 and may relieve all or any part of the interest imposed on a person by Section 45201 where the deficiency determination is made because no return was filed or payment of the fee was not made timely, or where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the fee payer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 53. Section 45609 is added to the Revenue and Taxation Code, to read:

45609. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the fee, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

SEC. 54. Section 45752 is added to the Revenue and Taxation Code, to read:

45752. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of fee nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 45751, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 45751 on or after January 1, 2000.

SEC. 55. Section 45858 of the Revenue and Taxation Code is amended to read:

45858. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Fee payers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered fee payers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of fee payer educational materials currently produced by the board that explain the most common areas of fee payer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to fee payer activities and areas of recurrent fee payer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

SEC. 56. Section 45865 of the Revenue and Taxation Code is amended to read:

45865. (a) Every fee payer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The fee payer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the fee payer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 57. Section 45868.5 is added to the Revenue and Taxation Code, to read:

45868.5. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 45609 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 45870.

SEC. 58. Section 45871 of the Revenue and Taxation Code is amended to read:

45871. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the fee payer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the fee payer to prevent the filing or recording of the lien. In the event fee liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not be required with respect to jeopardy determinations issued under Article 4 (commencing with Section 45351) of Chapter 3.

(c) If the board determines that the filing of a lien was in error, it shall mail a release to the fee payer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the fee payer and the entity recording the lien.

(d) When the board releases a lien that has been erroneously filed, notice of that release shall be mailed to the fee payer and, upon the request of the fee payer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

SEC. 59. Section 46157.5 is added to the Revenue and Taxation Code, to read:

46157.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 46155 and 46253 where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the fee payer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during fee periods commencing on or after January 1, 2000.

SEC. 60. Section 46464 is added to the Revenue and Taxation Code, to read:

46464. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the

person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the fees, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

SEC. 61. Section 46544 is added to the Revenue and Taxation Code, to read:

46544. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of fees nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 46541, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 46541 on or after January 1, 2000.

SEC. 62. Section 46613 of the Revenue and Taxation Code is amended to read:

46613. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Fee payers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered fee payers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of fee payer educational materials currently produced by the board that explain the most common areas of fee payer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to fee payer activities and areas of recurrent fee payer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

SEC. 63. Section 46620 of the Revenue and Taxation Code is amended to read:

46620. (a) Every fee payer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The fee payer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the fee payer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 64. Section 46623.5 is added to the Revenue and Taxation Code, to read:

46623.5. (a) Except in any case where the board finds collection of the fee to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the fee payer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The fee payer has entered into and is in compliance with an installment payment agreement pursuant to Section 46464 to satisfy the fee liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 46625.

SEC. 65. Section 46626 of the Revenue and Taxation Code is amended to read:

46626. (a) At least 30 days prior to the filing or recording of a lien pursuant to either Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the fee payer a preliminary notice of lien. The notice shall specify the board's statutory authority for filing or recording the lien, the earliest date on which the lien may be filed or recorded, and the remedies available to the fee payer to prevent the filing or recording of the lien. In the event liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 46301) of Chapter 3.

(c) If the board determines that a lien was recorded in error, it shall mail a release to the fee payer and the entity that recorded the lien as soon as possible, but in no event later than seven days after this determination and the receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneously recorded lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the fee payer and the entity that recorded the lien.

(d) Upon issuing a release pursuant to subdivision (c), notice of that release shall be mailed to the taxpayer. Upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was recorded.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

SEC. 66. Section 50112.2 of the Revenue and Taxation Code is amended to read:

50112.2. (a) If the board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 50112 and 50119.

(b) Any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 67. Section 50112.4 is added to the Revenue and Taxation Code, to read:

50112.4. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Section 50112.1 and may

relieve all or any part of the interest imposed on a person by Section 50113 when the deficiency determination is made because no return was filed or payment of the fee was not made timely, or where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the fee payer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 68. Section 50138.6 is added to the Revenue and Taxation Code, to read:

50138.6. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the fees, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

SEC. 69. Section 50150.5 is added to the Revenue and Taxation Code, to read:

50150.5. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of fees nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 50150, no interest shall be imposed on the amount of that erroneous

refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 50150 on or after January 1, 2000.

SEC. 70. Section 50156.2 of the Revenue and Taxation Code is amended to read:

50156.2. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Fee payers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered fee payers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of fee payer educational materials currently produced by the board that explain the most common areas of fee payer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to fee payer activities, and areas of recurrent fee payer noncompliance or inconsistency of administration.

(c) Electronic media used to comply with this section shall not represent the voice, picture, or name of members of the board or the Controller.

SEC. 71. Section 50156.9 of the Revenue and Taxation Code is amended to read:

50156.9. (a) Every fee payer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The fee payer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the fee payer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 72. Section 50156.15 of the Revenue and Taxation Code is amended to read:

50156.15. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the fee payer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the fee payer to prevent the filing or recording of the lien. In the event fee liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not be required with respect to jeopardy determinations issued under Article 4 (commencing with Section 50120.1) of Chapter 3.

(c) If the board determines that the filing of a lien was in error, it shall mail a release to the fee payer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the fee payer and the entity recording the lien.

(d) When the board releases a lien that has been erroneously filed, notice of that release shall be mailed to the fee payer and, upon the request of the fee payer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

SEC. 73. Section 50156.17 is added to the Revenue and Taxation Code, to read:

50156.17. (a) Except in any case where the board finds collection of the fee to be in jeopardy, if any property has been levied upon, the

property or the proceeds from the sale of the property shall be returned to the fee payer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The fee payer has entered into and is in compliance with an installment payment agreement pursuant to Section 50138.6 to satisfy the fee liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 50156.14.

SEC. 74. Section 55046 is added to the Revenue and Taxation Code, to read:

55046. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Section 55043 and may relieve all or any part of the interest imposed on a person by Section 55061 when the deficiency determination is made because no return was filed or payment of the fee was not made timely, or where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the fee payer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 75. Section 55209 is added to the Revenue and Taxation Code, to read:

55209. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the fees, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

SEC. 76. Section 55262 is added to the Revenue and Taxation Code, to read:

55262. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of fees nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 55261, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 55261 on or after January 1, 2000.

SEC. 77. Section 55323 of the Revenue and Taxation Code is amended to read:

55323. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance of inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

SEC. 78. Section 55330 of the Revenue and Taxation Code is amended to read:

55330. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fees and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was found unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 79. Section 55333.5 is added to the Revenue and Taxation Code, to read:

55333.5. (a) Except in any case where the board finds collection of the fee to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the fee payer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The fee payer has entered into and is in compliance with an installment payment agreement pursuant to Section 55209 to satisfy the fee liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 55335.

SEC. 80. Section 55336 of the Revenue and Taxation Code is amended to read:

55336. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5

(commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 55101) of Chapter 3.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but not later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

SEC. 81. Section 60212 is added to the Revenue and Taxation Code, to read:

60212. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by Sections 60207 and 60302 where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 82. Section 60493 is added to the Revenue and Taxation Code, to read:

60493. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable

penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

SEC. 83. Section 60564 is added to the Revenue and Taxation Code, to read:

60564. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 60561, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 60561 on or after January 1, 2000.

SEC. 84. Section 60623 of the Revenue and Taxation Code is amended to read:

60623. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

SEC. 85. Section 60630 of the Revenue and Taxation Code is amended to read:

60630. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer shall be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) The board's proposed award under this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

SEC. 86. Section 60632.1 is added to the Revenue and Taxation Code, to read:

60632.1. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 60493 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 60633.1.

SEC. 87. Section 60633.1 is added to the Revenue and Taxation Code, to read:

60633.1. (a) A taxpayer may file a claim with the board for reimbursement of bank charges incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank charges include a financial institution's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

SEC. 88. Section 60633.2 is added to the Revenue and Taxation Code, to read:

60633.2. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event the tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this action shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 60330) of Chapter 6.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

CHAPTER 930

An act to amend Section 17039 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17061 (relating to refunds pursuant to the Unemployment Insurance Code) and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063:

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by former Section 17052.13 (relating to sales and use tax credit).

(F) The credit allowed by Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(G) The credit allowed by Section 17053.5 (relating to the renter's credit).

(H) The credit allowed by former Section 17053.8 (relating to enterprise zone hiring credit).

(I) The credit allowed by Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit).

(J) The credit allowed by former Section 17053.11 (relating to program area hiring credit).

(K) For each taxable year beginning on or after January 1, 1994, the credit allowed by Section 17053.17 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 17053.30 (relating to land and water conservation).

(M) The credit allowed by Section 17053.33 (relating to targeted tax area sales or use tax credit).

(N) The credit allowed by Section 17053.34 (relating to targeted tax area hiring credit).

(O) The credit allowed by Section 17053.49 (relating to qualified property).

(P) The credit allowed by Section 17053.70 (relating to enterprise zone sales or use tax credit).

(Q) The credit allowed by Section 17053.74 (relating to enterprise zone hiring credit).

(R) The credit allowed by Section 17054 (relating to credits for personal exemption).

(S) The credit allowed by Section 17057 (relating to clinical testing expenses).

(T) The credit allowed by Section 17058 (relating to low-income housing).

(U) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(V) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(W) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit that is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit shall be allocated among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

(f) Unless otherwise provided, in the case of a partnership, any credit allowed by this part shall be computed at the partnership level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the partnership and to each partner.

(g) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any

taxable year attributable to the disregarded business entity shall be limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "net tax," as defined in subdivision (a), for the taxable year shall be limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 17062), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to that disregarded business entity. No credit shall be allowed if the taxpayer's regular tax (as defined in Section 17062), determined by including the income attributable to the disregarded business entity, is less than the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (c) and (d).

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 931

An act to amend Sections 17053.5, 18533, 18534, 18624, 19008, 19034, 19041, 19045, 19064, 19067, 19084, 19109, 19323, 19504, 19705, 19717, 21013, and 21016 of, to add Sections 17085.7, 18673, 19116, 19117, 19187, 19226, 19236, 19443, 19504.5, 19504.7, 19542.3, and 19546.5 to, and to repeal Section 19052 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 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 "Taxpayer's Bill of Rights Act of 1999."

SEC. 3. Section 17053.5 of the Revenue and Taxation Code is amended to read:

17053.5. (a) (1) For a qualified renter, there shall be allowed a credit against his or her "net tax"(as defined in Section 17039). The amount of the credit shall be as follows:

(A) For married couples filing joint returns, heads of household and surviving spouses (as defined in Section 17046) the credit shall

be equal to one hundred twenty dollars ($120) if adjusted gross income is fifty thousand dollars ($50,000) or less.

(B) For other individuals, the credit shall be equal to sixty dollars ($60) if adjusted gross income is twenty-five thousand dollars ($25,000) or less.

(2) Except as provided in subdivision (b), a husband and wife shall receive but one credit under this section. If the husband and wife file separate returns, the credit may be taken by either or equally divided between them, except as follows:

(A) If one spouse was a resident for the entire taxable year and the other spouse was a nonresident for part or all of the taxable year, the resident spouse shall be allowed one-half the credit allowed to married persons and the nonresident spouse shall be permitted one-half the credit allowed to married persons, prorated as provided in subdivision (e).

(B) If both spouses were nonresidents for part of the taxable year, the credit allowed to married persons shall be divided equally between them subject to the proration provided in subdivision (e).

(b) For a husband and wife, if each spouse maintained a separate place of residence and resided in this state during the entire taxable year, each spouse will be allowed one-half the full credit allowed to married persons provided in subdivision (a).

(c) For purposes of this section, a "qualified renter" means an individual who:

(1) Was a resident of this state, as defined in Section 17014, and

(2) Rented and occupied premises in this state which constituted his or her principal place of residence during at least 50 percent of the taxable year.

(d) The term "qualified renter" does not include any of the following:

(1) An individual who for more than 50 percent of the taxable year rented and occupied premises that were exempt from property taxes, except that an individual, otherwise qualified, is deemed a qualified renter if he or she or his or her landlord pays possessory interest taxes, or the owner of those premises makes payments in lieu of property taxes that are substantially equivalent to property taxes paid on properties of comparable market value.

(2) An individual whose principal place of residence for more than 50 percent of the taxable year is with any other person who claimed such individual as a dependent for income tax purposes.

(3) An individual who has been granted or whose spouse has been granted the homeowners' property tax exemption during the taxable year. This paragraph does not apply to an individual whose spouse has been granted the homeowners' property tax exemption if each spouse maintained a separate residence for the entire taxable year.

(e) Any otherwise qualified renter who is a nonresident for any portion of the taxable year shall claim the credits set forth in subdivision (a) at the rate of one-twelfth of those credits for each full

month that individual resided within this state during the taxable year.

(f) Every person claiming the credit provided in this section shall, as part of that claim, and under penalty of perjury, furnish that information as the Franchise Tax Board prescribes on a form supplied by the board.

(g) The credit provided in this section shall be claimed on returns in the form as the Franchise Tax Board may from time to time prescribe.

(h) For the purposes of this section, the term "premises" means a house or a dwelling unit used to provide living accommodations in a building or structure and the land incidental thereto, but does not include land only, unless the dwelling unit is a mobilehome. The credit is not allowed for any taxable year for the rental of land upon which a mobilehome is located if the mobilehome has been granted a homeowners' exemption under Section 218 in that year.

(i) This section shall become operative on January 1, 1998, and applies to any taxable year beginning on or after January 1, 1998.

(j) For each taxable year beginning on or after January 1, 1999, the Franchise Tax Board shall recompute the adjusted gross income amounts set forth in subdivision (a). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall compute an inflation adjustment factor by adding 100 percent to that portion of the percentage change figure which is furnished pursuant to paragraph (1) and dividing the result by 100.

(3) The Franchise Tax Board shall multiply the amount in subparagraph (B) of paragraph (1) of subdivision (d) for the preceding taxable year by the inflation adjustment factor determined in paragraph (2), and round off the resulting products to the nearest one dollar ($1).

(4) In computing the amounts pursuant to this subdivision, the amounts provided in subparagraph (A) of paragraph (1) of subdivision (a) shall be twice the amount provided in subparagraph (B) of paragraph (1) of subdivision (a).

SEC. 4. Section 17085.7 is added to the Revenue and Taxation Code, to read:

17085.7. (a) In the case of any distribution made on account of a notice to withhold (pursuant to Section 18670 or 18670.5) on a qualified retirement plan, no additional tax shall be imposed in accordance with Section 72(t) of the Internal Revenue Code.

(b) This section shall apply to distributions after December 31, 1999.

SEC. 5. Section 18533 of the Revenue and Taxation Code is amended to read:

18533. (a) (1) Notwithstanding subdivision (a) and the first sentence of subdivision (b) of Section 19006:

(A) An individual who has made a joint return may elect to seek relief under the procedures prescribed under subdivision (b), and

(B) If the individual is eligible to elect the application of subdivision (c), the individual may, in addition to any election under subparagraph (A), elect to limit the individual's liability for any deficiency with respect to the joint return in the manner prescribed under subdivision (c).

(2) Any determination under this section shall be made without regard to community property laws.

(b) (1) Under procedures prescribed by the Franchise Tax Board, if—

(A) A joint return has been made under this chapter for a taxable year,

(B) On that return there is an understatement of tax attributable to erroneous items of one individual filing the joint return,

(C) The other individual filing the joint return establishes that in signing the return he or she did not know of, and had no reason to know of, that understatement,

(D) Taking into account all facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for that taxable year attributable to that understatement, and

(E) The other individual elects (in the form and manner as the Franchise Tax Board may prescribe) the benefits of this subdivision not later than the date that is two years after the date the Franchise Tax Board has begun collection activities with respect to the individual making the election,

then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to that understatement.

(2) If an individual who, but for subparagraph (C) of paragraph (1), would be relieved of liability under paragraph (1), establishes that in signing the return the individual did not know, and had no reason to know, the extent of the understatement, then the individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to the portion of the understatement of which that individual did not know and had no reason to know.

(3) For purposes of this subdivision, the term "understatement" has the meaning given to that term by Section 6662(d)(2)(A) of the Internal Revenue Code.

(c) (1) Except as provided in this subdivision, if an individual who has made a joint return for any taxable year elects the application of

this subdivision, the individual's liability for any deficiency which is assessed with respect to the return shall not exceed the portion of the deficiency properly allocable to the individual under subdivision (d).

(2) Except as provided in clause (ii) of subparagraph (A) of paragraph (3) or subparagraph (C) of paragraph (3), each individual who elects the application of this subdivision shall have the burden of proof with respect to establishing the portion of any deficiency allocable to that individual.

(3) (A) (i) An individual shall only be eligible to elect the application of this subdivision if—

(I) At the time the election is filed, that individual is no longer married to, or is legally separated from, the individual with whom that individual filed the joint return to which the election relates, or

(II) That individual was not a member of the same household as the individual with whom the joint return was filed at any time during the 12-month period ending on the date the election is filed.

(ii) If the Franchise Tax Board demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by those individuals, an election under this subdivision by either individual shall be invalid (and subdivision (a) and the first sentence of subdivision (b) of Section 19006 shall apply to the joint return).

(B) An election under this subdivision for any taxable year shall be made not later than two years after the date on which the Franchise Tax Board has begun collection activities with respect to the individual making the election.

(C) If the Franchise Tax Board demonstrates that an individual making an election under this subdivision had actual knowledge, at the time the individual signed the return, of any item giving rise to a deficiency (or portion thereof) which is not allocable to the individual under subdivision (d), that election shall not apply to that deficiency (or portion). This subparagraph shall not apply where the individual with actual knowledge establishes that the individual signed the return under duress.

(4) (A) Notwithstanding any other provision of this subdivision, the portion of the deficiency for which the individual electing the application of this subdivision is liable (without regard to this paragraph) shall be increased by the value of any disqualified asset transferred to the individual.

(B) For purposes of this paragraph—

(i) The term "disqualified asset" means any property or right to property transferred to an individual making the election under this subdivision with respect to a joint return by the other individual filing the joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax.

(ii) (I) For purposes of clause (i), except as provided in subclause (II), any transfer that is made after the date that is one year before the date on which the first notice of proposed assessment under

Article 3 (commencing with Section 19031) of Chapter 4 is sent shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

(II) Subclause (I) shall not apply to any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to that decree or to any transfer that an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax.

(d) For purpose of subdivision (c)—

(1) The portion of any deficiency on a joint return allocated to an individual shall be the amount which bears the same ratio to the deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount of all items taken into account in computing the deficiency.

(2) If a deficiency (or portion thereof) is attributable to—

(A) The disallowance of a credit, or

(B) Any tax (other than tax imposed by Section 17041 or 17062) required to be included with the joint return, and the item is allocated to one individual under paragraph (3), that deficiency (or portion) shall be allocated to that individual. Any item so allocated shall not be taken into account under paragraph (1).

(3) For purposes of this subdivision—

(A) Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.

(B) Under rules prescribed by the Franchise Tax Board, an item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to the other individual.

(C) The Franchise Tax Board may provide for an allocation of any item in a manner not prescribed by subparagraph (A) if the Franchise Tax Board establishes that the allocation is appropriate due to fraud of one or both individuals.

(4) If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, the disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, that liability shall be disregarded in computing the separate liability of either spouse and that liability shall be allocated appropriately between the spouses.

(e) (1) In the case of an individual who elects to have subdivision (b) or (c) apply—

(A) (i) The determination of the Franchise Tax Board as to whether the liability is to be revised as to one individual filing the

joint return shall be made not less than 30 days after notification of the other individual filing the joint return.

(ii) Any action taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed to both individuals filing the joint return, unless, within that 30-day period, the individual making the election under subdivision (b) or (c) appeals the determination to the board as provided in clause (iii) or the other individual filing the joint return appeals the determination to the board as provided in Section 19045.

(iii) The individual making the election under subdivision (b) or (c) may appeal the determination of the Franchise Tax Board of the appropriate relief available to the individual under this section if that appeal is filed during the 30-day period prescribed in clause (ii) and the appeal shall be treated as an appeal to the board under Section 19045. Notwithstanding the preceding sentence, the individual making the election under subdivision (b) or (c) may appeal to the board at any time after the date which is six months after the date the election is filed with the Franchise Tax Board and before the close of the 30-day period prescribed in clause (ii).

(B) Except as otherwise provided in Section 19081 or 19082, no levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subdivision (b) or (c) for collection of any assessment to which the election relates until the expiration of the 30-day period described in clause (ii) of subparagraph (A), or, if an appeal to the board has been filed under clause (iii) or Section 19045, until the decision of the board has become final.

(2) The running of the period of limitations in Section 19371 on the collection of the assessment to which the petition under subparagraph (A) of paragraph (1) relates shall be suspended for the period during which the Franchise Tax Board is prohibited by subparagraph (B) of paragraph (1) from collecting by levy or a proceeding in court and for 60 days thereafter.

(3) (A) Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than Article 6 (commencing with Section 19441) of Chapter 6), a credit or refund shall be allowed or made to the extent attributable to the application of this section.

(B) In the case of any election under subdivision (b) or (c), if a decision of the board in any prior proceeding for the same taxable year has become final, that decision shall be conclusive except with respect to the qualification of the individual for relief which was not an issue in that proceeding. The exception contained in the preceding sentence shall not apply if the board determines that the individual participated meaningfully in the prior proceeding.

(f) Under procedures prescribed by the Franchise Tax Board, if taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either), and relief is not available to the individual under subdivision (b) or (c), the Franchise Tax Board may relieve the individual of that liability.

(g) (1) The Franchise Tax Board may prescribe regulations providing methods for allocation of items other than the methods under paragraph (3) of subdivision (d).

(2) It is the intent of the Legislature that, in construing this section and any other sections which are specifically cross-referenced in this section, any regulations that may be promulgated by the Secretary of the Treasury under Section 6015 of the Internal Revenue Code, as amended by Public Law 105-206, shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by the Franchise Tax Board.

(h) (1) Except as provided in paragraph (2), the amendments made by the act adding this subdivision shall apply to any liability for tax arising after the effective date of the act adding this subdivision and any liability for tax arising on or before that date but remaining unpaid as of that date.

(2) The four-year period under subparagraph (E) of paragraph (1) of subdivision (b) or subparagraph (B) of paragraph (3) of subdivision (c) shall not expire before the date which is four years after the date of the first collection activity after the effective date of the act adding this subdivision.

SEC. 6. Section 18534 of the Revenue and Taxation Code is amended to read:

18534. (a) Under regulations prescribed by the Franchise Tax Board, if:

(1) An individual does not file a joint return for any taxable year,

(2) That individual does not include in gross income for that taxable year an item of community income properly includable therein,

(3) The individual establishes that he or she did not know of, and had no reason to know of, that item of community income, and

(4) Taking into account all facts and circumstances, it is inequitable to include that item of community income in that individual's gross income, then, for purposes of Part 10 (commencing with Section 17001) and this part, that item of community income shall be included in the gross income of the other spouse (and not in the gross income of the individual).

Under procedures prescribed by the Franchise Tax Board, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Franchise Tax Board may relieve the individual of that liability.

(b) The Franchise Tax Board may disallow the benefits of any community property law to any taxpayer with respect to any income if that taxpayer acted as if solely entitled to that income and failed to notify the taxpayer's spouse before the due date (including extensions) for filing the return for the taxable year in which the income was derived of the nature and amount of that income.

(c) It is the intent of the Legislature that, in construing this section, any regulations that may be promulgated by the Secretary of the Treasury under Section 66(c) of the Internal Revenue Code, as amended by Public Law 105-206, shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by the Franchise Tax Board.

(d) The amendments made by the act adding this subdivision shall apply to any liability for tax arising after the effective date of the act adding this subdivision and any liability for tax arising on or before that date but remaining unpaid as of that date.

SEC. 7. Section 18624 of the Revenue and Taxation Code is amended to read:

18624. (a) Section 6109 of the Internal Revenue Code, relating to identifying numbers, shall apply, except as otherwise provided.

(b) Identifying numbers shall be required on state tax returns, statements, or other documents in the form and manner as the Franchise Tax Board may require.

(c) Section 6109(h) of the Internal Revenue Code, relating to identifying information required with respect to certain seller-provided financing, shall not apply.

(d) The amendments made to Section 6109(a) of the Internal Revenue Code, relating to identifying number of income tax return preparer, by Public Law 105-206 shall apply.

(e) The amendments made by the act adding this subdivision shall be operative on the effective date of the act adding this subdivision.

SEC. 8. Section 18673 is added to the Revenue and Taxation Code, to read:

18673. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part II of the Code of Civil Procedure, if the Franchise Tax Board determines upon receiving information from the taxpayer that his or her employer withheld earnings for taxes pursuant to Article 4 (commencing with Section 19251) of Chapter 5 and failed to remit the withheld earnings to the Franchise Tax Board, the employer shall be liable for the amount not remitted. The Franchise Tax Board's determination shall be based on payroll documents or other substantiating evidence furnished by the taxpayer.

(b) Upon its determination, the Franchise Tax Board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the Franchise Tax Board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the Franchise Tax Board upon notice, that amount for which the employer is liable shall be assessed, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the assessment against the employer is final and due and payable, the taxpayer's account shall be immediately credited with an amount equal to that assessed amount as though it were a payment received by the Franchise Tax Board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the taxpayer is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the Franchise Tax Board under subdivision (a).

(2) The earlier of the time the credit is applied to the taxpayer's account pursuant to subdivision (d) or the assessment against the employer is withdrawn or revised and the taxpayer is notified by the Franchise Tax Board thereof.

(f) If under this section an amount that was withheld and not remitted to the Franchise Tax Board is final and due and payable by the employer and credited to the taxpayer's account, this remedy shall be the exclusive remedy for the taxpayer to recover that amount from the employer.

(g) This section shall not apply to debts, obligations, or other amounts for which an earnings withholding order or assignment is issued by the Franchise Tax Board pursuant to Article 5, 5.5, or 6 of Chapter 5 or Section 10878.

(h) This section shall apply to determinations made by the Franchise Tax Board on or after the effective date of the act adding this section.

SEC. 9. Section 19008 of the Revenue and Taxation Code is amended to read:

19008. (a) The Franchise Tax Board may, in cases of financial hardship, as determined by the Franchise Tax Board, allow an individual or fiduciary to enter into installment payment agreements with the Franchise Tax Board to pay taxes due, plus applicable interest and penalties over the life of the installment period. Failure by an individual or fiduciary to comply fully with the terms of the installment payment agreement shall render the agreement null and void, unless the Franchise Tax Board determines that the failure was due to a reasonable cause, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(b) In the case of a liability for tax of an individual under Part 10 (commencing with Section 17001) or this part, the Franchise Tax

Board shall enter into an agreement to accept the payment of the tax in installments if, as of the date the individual offers to enter into the agreement, all of the following apply:

(1) The aggregate amount of the liability (determined without regard to interest, penalties, additions to the tax and additional amounts) does not exceed ten thousand dollars ($10,000).

(2) The taxpayer (and, if the liability relates to a joint return, the taxpayer's spouse) has not during any of the preceding five taxable years done any of the following:

(A) Failed to file any return of tax imposed under Part 10 (commencing with Section 17001) or this part.

(B) Failed to pay any tax required to be shown on the return.

(C) Entered into an installment agreement under this section for payment of any tax imposed by Part 10 (commencing with Section 17001) or this part.

(3) The Franchise Tax Board determines that the taxpayer is financially unable to pay the liability in full when due (and the taxpayer submits any information as the Franchise Tax Board may require to make this determination).

(4) The agreement requires full payment of the liability within three years.

(5) The taxpayer agrees to comply with the provisions of this part and Part 10 (commencing with Section 17001) for the period the agreement is in effect.

(c) Except in any case where the Franchise Tax Board finds collection of the tax to which an installment payment agreement relates to be in jeopardy, or there is a mutual consent to terminate, alter, or modify the agreement, the agreement shall not be considered null and void, or otherwise terminated, unless both of the following occur:

(1) A notice of termination is provided to the individual or fiduciary not later than 30 days before the date of termination.

(2) The notice includes an explanation of why the Franchise Tax Board intends to terminate the agreement.

(d) No levy may be issued on the property or rights to property of any person with respect to any unpaid tax:

(1) During the period that an offer by the taxpayer for an installment agreement under this section for payment of the unpaid tax is pending with the Franchise Tax Board.

(2) If the offer is rejected by the Franchise Tax Board, during the 30 days thereafter (and, if a request for review of the rejection is filed within the 30 days, during the period that the review is pending).

(3) During the period that the installment agreement for payment of the unpaid tax is in effect.

(4) If the agreement is terminated by the Franchise Tax Board, during the 30 days thereafter (and, if a request for review of the termination is filed within the 30 days, during the period that the review is pending).

(5) This subdivision shall not apply with respect to any of the following:

(A) Any unpaid tax if either of the following occurs:

(i) The taxpayer files a written notice with the Franchise Tax Board that waives the restriction imposed by this subdivision on levy with respect to the tax.

(ii) The Franchise Tax Board finds that the collection of that tax is in jeopardy.

(B) Any levy that was first issued before the date that the applicable proceeding under this subdivision commenced.

(C) At the discretion of the Franchise Tax Board, any unpaid tax for which the taxpayer makes an offer of an installment agreement subsequent to a rejection of an offer of an installment agreement with respect to that unpaid tax (or to any review thereof).

(D) The period of limitation under Section 19371 shall be suspended for the period during which the Franchise Tax Board is prohibited under this subdivision from making a levy.

(e) The Taxpayers' Rights Advocate shall establish procedures for an independent departmental administrative review for the rejection of the offer of an installment payment and for installment payment agreements that are rendered null and void, or otherwise terminated under this section, for individuals or fiduciaries who request that review. This administrative review shall not be subject to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of the Government Code. Unless review is requested by the taxpayer within 30 days of the date of rejection of the offer of an installment agreement or termination of the installment agreement, this administrative review shall not stay collection of the tax to which the installment payment agreement relates.

(f) The amendments made by the act adding this subdivision are operative on the effective date of that act, except subdivision (d) shall be operative for any proposed installment agreement submitted after December 31, 2000.

SEC. 10. Section 19034 of the Revenue and Taxation Code is amended to read:

19034. (a) Each notice shall set forth the reasons for the proposed deficiency assessment and the computation thereof.

(b) Each notice shall include the date determined by the Franchise Tax Board as the last day on which the taxpayer may file a written protest pursuant to Section 19041. Failure to include this date shall not invalidate a notice that is otherwise valid.

(c) The amendments made by the act adding this subdivision shall apply to any notice mailed after December 31, 1999.

SEC. 11. Section 19041 of the Revenue and Taxation Code is amended to read:

19041. (a) Within 60 days after the mailing of each notice of proposed deficiency assessment the taxpayer may file with the Franchise Tax Board a written protest against the proposed

deficiency assessment, specifying in the protest the grounds upon which it is based.

(b) Any protest filed with the Franchise Tax Board on or before the last date specified for filing that protest by the Franchise Tax Board in the notice of proposed deficiency assessment (according to Section 19034) shall be treated as timely filed.

(c) The amendments made by the act adding this subdivision shall apply to any notice mailed after December 31, 1999.

SEC. 12. Section 19045 of the Revenue and Taxation Code is amended to read:

19045. (a) The Franchise Tax Board's action upon the protest, whether in whole or in part, is final upon the expiration of 30 days from the date when it mails notice of its action to the taxpayer, unless within that 30-day period the taxpayer appeals in writing from the action of the Franchise Tax Board to the board.

(b) (1) The Franchise Tax Board's notice of action upon protest shall include the date determined by the Franchise Tax Board as the last day on which the taxpayer may file an appeal with the board.

(2) Any appeal to the board filed by the taxpayer on or before the date for filing an appeal specified in the notice (pursuant to paragraph (1)) shall be treated as timely filed.

(c) This section shall apply to any notice mailed after December 31, 1999.

SEC. 13. Section 19052 of the Revenue and Taxation Code is repealed.

SEC. 14. Section 19064 of the Revenue and Taxation Code is amended to read:

19064. (a) If any person initiates a motion to quash a subpoena, as provided by Sections 7465 to 7476, inclusive, of the Government Code, and that person is the person with respect to whose liability the subpoena is issued (or is the agent, nominee, or other person acting under the direction or control of that person), then the running of any period of limitations under Section 19057 (relating to deficiency assessments), Section 19087 (relating to false or fraudulent returns), or Section 19704 (relating to criminal prosecutions) with respect to that person shall be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of the subpoena is pending.

(b) In the absence of the resolution of the subpoenaed person's response to a subpoena issued under Section 19504 (power of examination), the running of any period of limitations under Section 19057 (relating to deficiency assessments), Section 19087 (relating to false or fraudulent returns), or Section 19704 (relating to criminal prosecutions) with respect to any person whose liability the subpoena was issued (other than a person taking action as provided by subdivision (a)) shall be suspended for the period beginning on the date which is six months after the service of the subpoena and ending with the final resolution of that response.

(c) The amendments made by the act adding this subdivision are operative for any subpoena served after the effective date of the act adding this subdivision.

SEC. 15. Section 19067 of the Revenue and Taxation Code is amended to read:

19067. (a) Where before the expiration of the time prescribed for the mailing of a notice of a proposed deficiency assessment, the taxpayer consents in writing to an assessment after that time, the assessment may be made at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(b) The Franchise Tax Board shall notify the taxpayer of the taxpayer's right to refuse to extend the expiration of the time prescribed for the mailing of a notice of a proposed deficiency assessment, or to limit that extension to a particular period of time, on each occasion when the taxpayer is requested to provide the taxpayer's consent.

(c) The amendments made by the act adding this subdivision shall apply to any request to extend the expiration of the time prescribed for the mailing of a notice of a proposed deficiency assessment made after December 31, 2000.

SEC. 16. Section 19084 of the Revenue and Taxation Code is amended to read:

19084. (a) (1) (A) Unless the Chief Counsel of the Franchise Tax Board (or the chief counsel's delegate) personally approves (in writing) the assessment or levy, no assessment shall be made under this article and no levy shall be issued less than 30 days after either of the following:

(i) A notice and demand is mailed or issued for payment pursuant to Section 19081.

(ii) Notice and demand for a return and payment is mailed or issued pursuant to Section 19082.

(B) Within five days after the day on which either a notice and demand for payment is mailed or issued pursuant to Section 19081, or notice and demand for a return and payment is mailed or issued pursuant to Section 19082, the Franchise Tax Board shall mail or issue the taxpayer a written statement of the information upon which the Franchise Tax Board relies in issuing that notice and demand.

(2) Within 30 days after the day on which the taxpayer is furnished the written statement described in paragraph (1), or within 30 days after the last day of the period within which the statement is required to be furnished, the taxpayer may petition the Franchise Tax Board to review whether its finding pursuant to Section 19081 or 19082 is reasonable under the circumstances, specifying the grounds on which the petition is based. The filing of a petition for review shall not operate to stay collection. Collection may be stayed only as provided in Section 19083. A petition filed pursuant to this paragraph

shall also be considered a protest filed pursuant to Section 19041 against the proposed additional tax.

(3) If a petition for review under paragraph (2) is not made within the 30-day period set forth in that paragraph, the finding of the Franchise Tax Board pursuant to Section 19081 or 19082 is final.

(4) After a petition for review is filed under paragraph (2), the Franchise Tax Board shall determine whether or not the issuance of notice and demand under Section 19081 or 19082 is reasonable under the circumstances. In making this determination, the Franchise Tax Board shall grant the taxpayer or authorized representative an oral hearing if the taxpayer has so requested in the petition. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing under this paragraph. The burden of proof with respect to whether a jeopardy exists as to collection or an assessment is upon the Franchise Tax Board.

(5) The Franchise Tax Board shall make the determination under paragraph (4) within 90 days of the filing of the petition for review unless the taxpayer requests, in writing, additional time.

(6) In making the determination required by paragraph (4), the Franchise Tax Board shall consider all relevant factors, including, but not limited to, the likelihood that collection will be jeopardized, the assets of the taxpayer, and the amount of the assessment as it relates to whether jeopardy status exists. The burden of proof as to the amount of the assessment for purposes of determining jeopardy status is upon the taxpayer.

(b) (1) Within 60 days after the earlier of the following days, the taxpayer may appeal the determination to the State Board of Equalization in the manner provided in Section 19085:

(A) The day the Franchise Tax Board notifies the taxpayer of the determination described in paragraph (4) of subdivision (a).

(B) One day after the time period prescribed by paragraph (5) of subdivision (a) for the Franchise Tax Board to make its determination.

(2) If an appeal is not filed before the expiration of the time periods, the Franchise Tax Board's determination is final. Filing of an appeal shall not operate to stay collection. Collection may be stayed only as provided in Section 19083.

(3) Within 60 days after an appeal is filed under paragraph (1), the board shall determine whether the issuance of notice and demand under Section 19081 or 19082 is reasonable under the circumstances. The burden of proof with respect to whether a jeopardy exists as to collection or an assessment is upon the Franchise Tax Board.

(4) If the board determines that a jeopardy status does not apply to all or part of the assessment, the board may modify the amount of the assessment to which the jeopardy attaches. If the board does not act within the time period provided in paragraph (3) as modified by

paragraph (6), the board will be deemed to have denied the taxpayer's appeal.

(5) In making the determination required by paragraph (3), the board shall consider all relevant factors, including, but not limited to, the likelihood that collection will be jeopardized, the assets of the taxpayer, and the amount of the assessment as it relates to whether jeopardy status exists. The burden of proof as to the amount of the assessment for purposes of determining jeopardy status is upon the taxpayer.

(6) If either party requests an extension of the 60-day period set forth in paragraph (3) and establishes reasonable grounds why the extension should be granted, the board may grant an extension of not more than 30 additional days.

(c) (1) Within 60 days after the earlier of the following days, either party may bring a civil action against the other in superior court for a judicial determination as to whether or not the issuance of the notice and demand under Section 19081 or 19082 is reasonable under the circumstances:

(A) The day the board notifies the taxpayer of its determination described in paragraph (3), as modified by paragraph (6), of subdivision (b).

(B) If the board fails to make a timely determination, then one day after the time prescribed for the board to make its determination.

(2) If a civil action under this subdivision is not commenced within the 60-day period set forth in paragraph (1), the board's determination is final. The filing of the civil action shall not operate to stay collection. Collection shall be stayed only as provided by Section 19083.

(3) Within 60 days after proper service is made, the superior court shall determine whether the issuance of notice and demand under Section 19081 or 19082 is reasonable under the circumstances. The burden of proof with respect to whether a jeopardy exists as to collection or an assessment is upon the Franchise Tax Board.

(4) If the court determines that a jeopardy status does not apply to all or part of the assessment, the court may modify the amount of the assessment to which the jeopardy attaches.

(5) In making the determination required by paragraph (3), the superior court shall consider all relevant factors, including, but not limited to, the likelihood that collection will be jeopardized, the assets of the taxpayer, and the amount of the assessment as it relates to whether jeopardy status exists. The burden of proof as to the amount of the assessment for purposes of determining jeopardy status is upon the taxpayer.

(6) If either party in the action requests an extension of the 60-day period set forth in paragraph (3) of subdivision (c) and establishes reasonable grounds why the extension should be granted, the superior court may grant an extension of not more than 30 additional days.

(7) Actions filed pursuant to this section shall be filed in the Superior Court of the County of Los Angeles, the City and County of San Francisco, the County of San Diego, or the County of Sacramento. Sections 19387 and 19389 shall apply to those actions.

(8) The determination made by a superior court under this section shall be final and conclusive and shall not be reviewed by any other court.

(d) The amendments made by the act adding this subdivision are operative for taxes assessed and levies made after the effective date of the act adding this subdivision.

SEC. 17. Section 19109 of the Revenue and Taxation Code is amended to read:

19109. (a) If the Franchise Tax Board extends for any period the time for filing a return under Section 18572 or subdivision (a) of Section 18567 and the time for paying the tax under Section 18572 or subdivision (c) of Section 18567 (and waives any penalties relating to the failure to so file or so pay) for any individual located in a presidentially declared disaster area or any county or city in this state which is proclaimed by the Governor to be in a state of disaster who incurred a loss, the Franchise Tax Board shall, notwithstanding subdivision (b) of Section 18572, abate for that period the assessment of any interest prescribed under this article on that tax.

(b) For purposes of subdivision (a), the term "presidentially declared disaster area" means, with respect to any individual, any area which the President has determined warrants assistance by the federal government under the Disaster Relief and Emergency Assistance Act.

(c) For purposes of this section, the term "individual" shall not include any estate or trust.

(d) This section shall apply to disasters declared after December 31, 1997, with respect to taxable years beginning after December 31, 1997.

SEC. 18. Section 19116 is added to the Revenue and Taxation Code, to read:

19116. (a) In the case of an individual who files a return of tax imposed under Part 10 (commencing with Section 17001) for a taxable year on or before the due date for the return, including extensions, if the Franchise Tax Board does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis of the liability before the close of the notification period, the Franchise Tax Board shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

(b) For purposes of this section:

(1) Except as provided in subdivision (e), "notification period" means the 18-month period beginning on the later of either of the following:

(A) The date on which the return is filed.

(B) The due date of the return without regard to extensions.

(2) "Suspension period" means the period beginning on the day after the close of the notification period and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(c) This section shall be applied separately with respect to each item or adjustment.

(d) This section shall not apply to any of the following:

(1) Any penalty imposed by Section 19131.

(2) Any penalty imposed by Section 19132.

(3) Any interest, penalty, addition to tax, or additional amount involving fraud.

(4) Any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return.

(5) Any criminal penalty.

(e) For taxpayers required by subdivision (a) of Section 18622 to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority the following rules shall apply:

(1) The notification period under subdivision (a) shall be either of the following:

(A) One year from the date the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if the taxpayer or the Internal Revenue Service reports that change or correction within six months after the final federal determination.

(B) Two years from the date when the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if after the six-month period required in Section 18622, a taxpayer or the Internal Revenue Service reports a change or correction.

(2) The suspension period under subdivision (a) shall mean the period beginning on the day after the close of the notification period under paragraph (1) and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(f) This section shall apply to taxable years ending after the effective date of the act adding this section.

SEC. 19. Section 19117 is added to the Revenue and Taxation Code, to read:

19117. (a) The Franchise Tax Board shall include with each notice to an individual taxpayer which includes an amount of interest required to be paid by the taxpayer under this part information with respect to the section under which interest is imposed and a

description of how the interest is computed. Upon the request of the taxpayer, the Franchise Tax Board shall also provide a computation of the interest.

(b) This section shall apply to any notice issued after December 31, 2001.

SEC. 20. Section 19187 is added to the Revenue and Taxation Code, to read:

19187. (a) The Franchise Tax Board shall include with each notice imposing a penalty under this part information that contains the name of the penalty, the section of this part under which the penalty is imposed, and a description of the computation of the penalty. Upon the request of the taxpayer, the Franchise Tax Board shall also provide a computation of the penalty imposed.

(b) (1) No penalty under this part shall be imposed unless the initial determination of the imposition of the penalty is personally approved in writing by the immediate supervisor of the individual making that determination or a higher level official as designated by the executive officer, or his or her delegee.

(2) Paragraph (1) shall not apply to any of the following:

(A) Any addition to tax under Sections 19131, 19132, 19136, or 19142.

(B) Any other penalty automatically calculated through electronic means.

(C) Any penalty resulting from a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority required to be reported under subdivision (a) of Section 18622.

(c) For purposes of this section, "penalty" includes any addition to tax or any additional amount.

(d) This section shall apply to notices issued and penalties imposed after December 31, 2001.

SEC. 21. Section 19226 is added to the Revenue and Taxation Code, to read:

19226. (a) At the request of the owner whose property is subject to any lien under Section 19221, the Franchise Tax Board shall issue a release of lien from that property if the owner is not the person whose unsatisfied liability gave rise to the lien and the owner does either of the following:

(1) Deposits with the Franchise Tax Board an amount of money equal to the value of the interest of the state (as determined by the Franchise Tax Board) in the property.

(2) Furnishes a bond acceptable to the Franchise Tax Board in a like amount.

(b) The Franchise Tax Board shall refund the amount so deposited, pay interest at the overpayment rate under Section 19521, and release the bond, to the extent the Franchise Tax Board determines that either of the following apply:

(1) The unsatisfied liability giving rise to the lien can be satisfied from a source other than the property for which the deposit or bond is made.

(2) The value of the interest of the state in the property is less than the Franchise Tax Board's prior determination of the value.

(c) If no request is made under subdivision (d), within the period prescribed, the Franchise Tax Board shall do both of the following within 60 days after the expiration of the period:

(1) Apply the amount deposited or collected on the bond, to the extent necessary to satisfy the unsatisfied liability secured by the lien.

(2) Refund (with interest at the overpayment rate under Section 19521) any portion of the amount deposited which is not used to satisfy the liability.

(d) If a release is issued pursuant to this section, the owner may, within 60 days after the day on which the release is issued, request the Franchise Tax Board as provided under subdivision (f) to determine whether the value of the interest of the state (if any) is less than the Franchise Tax Board's prior determination of the value. No other action may be brought by the owner for a determination.

(e) This section shall not limit the circumstances in which the Franchise Tax Board may release a lien under any circumstances to facilitate the collection of the tax liability or, if that release is in the best interest of the taxpayer and the state, take any action associated with the release of that lien it deems appropriate.

(f) The Taxpayers' Rights Advocate shall establish procedures for an independent departmental administrative review for requests made under subdivision (d). This administrative review shall not be subject to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of the Government Code. If the administrative review determines that the Franchise Tax Board's previous determination of the value of the interest of the state in the property for purposes of this section exceeds the actual value of the state's interest, the board shall provide a refund of the amount deposited and a release of the bond, to the extent that the aggregate of the amounts thereof exceeds the value so determined. In the case of a refund issued pursuant to this subdivision, interest shall be allowed at the rate prescribed for overpayments from the date the Franchise Tax Board receives the amount to the date of refund.

(g) This section shall be operative on the effective date of the act adding this section.

SEC. 22. Section 19236 is added to the Revenue and Taxation Code, to read:

19236. For purposes of issuing a warrant pursuant to this article:

(a) (1) No levy may be issued on any property or right to property to be sold in accordance with the Code of Civil Procedure until a thorough investigation of the status of the property has been completed by the Franchise Tax Board.

(2) For purposes of paragraph (1), an investigation of the status of any property shall include all of the following:

(A) A verification of the taxpayer's liability.

(B) The completion of an analysis to determine whether the expense of the sale process to the state exceeds the liability for which the levy would be issued.

(C) The determination that the equity in the property is sufficient to yield net proceeds from the sale of the property to apply to the liability.

(D) A thorough consideration of alternative collection methods.

(b) If the amount of the levy does not exceed five thousand dollars ($5,000), no levy may be issued on either of the following:

(1) Any real property used as a residence by the taxpayer.

(2) Any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

(c) Notwithstanding the investigation required under subdivision (a):

(1) The principal residence of the taxpayer may not be sold except in accordance with Article 4 (commencing with Section 704.710) of Chapter 4 of Division 2 of Title 9 of the Code of Civil Procedure, which requires a court order for sale.

(2) Tangible personal property or real property (other than real property which is rented or a principal residence) used in the trade or business of an individual taxpayer shall not be exempt from levy unless:

(A) The levy is approved in writing by the assistant executive officer for collection (or delegate), or

(B) The Franchise Tax Board finds that collection of tax is in jeopardy. The officer, or delegate, may not approve a levy under subparagraph (A) unless the officer determines that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceedings.

(d) This section shall be operative for any warrant issued on or after the effective date of the act adding this section.

SEC. 24. Section 19323 of the Revenue and Taxation Code is amended to read:

19323. (a) If the Franchise Tax Board disallows any claim for refund, it shall notify the taxpayer accordingly and provide an explanation for the disallowance.

(b) The amendments made by the act adding this subdivision shall apply to disallowances after the 180th day after the effective date of the act adding this subdivision.

SEC. 25. Section 19443 is added to the Revenue and Taxation Code, to read:

19443. (a) (1) The executive officer and chief counsel of the Franchise Tax Board, jointly, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the Franchise Tax Board, upon recommendation by its executive officer and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of the recommendation shall be deemed approved.

(3) The Franchise Tax Board, itself, may by resolution delegate to the executive officer and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars ($7,500) but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) For an amount to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that the:

(A) Amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income, and

(B) Taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The Franchise Tax Board shall have determined that acceptance of the compromise is in the best interest of the state.

(d) A determination by the Franchise Tax Board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(e) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the Franchise Tax Board shall notify the taxpayer in writing.

(f) In the case of a joint and several liability, the acceptance of an offer in compromise from one liable spouse shall not relieve the other spouse from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(g) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive officer of the Franchise Tax Board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax, and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or the national defense. No list shall be prepared and no releases distributed by the Franchise Tax Board in connection with these statements.

(h) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The Franchise Tax Board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the Franchise Tax Board any property belonging to the estate of any taxpayer or other person liable for the tax;

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax;

(2) The taxpayer fails to either:

(A) Comply with any of the terms and conditions relative to the offer;

(B) File subsequent required returns and pay subsequent final tax liabilities within 20 days after the Franchise Tax Board issues notice and demand to the person stating that the continued failure to file or pay the tax may result in rescission of the compromise.

(i) This section shall become operative on the effective date of the act adding this section without regard to the taxable or income year at issue.

SEC. 26. Section 19504 of the Revenue and Taxation Code is amended to read:

19504. (a) The Franchise Tax Board, for the purpose of administering its duties under this part, including ascertaining the correctness of any return; making a return where none has been made; determining or collecting the liability of any person in respect of any liability imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part (or the liability at law or in equity of any transferee in respect of that liability); shall have the power to require by demand, that an entity of any kind including, but not limited to, employers, persons, or financial institutions provide information or make available for examination or copying at a specified time and place, or both, any book, papers, or

other data which may be relevant to that purpose. Any demand to a financial institution shall comply with the California Right to Financial Privacy Act set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. Information which may be required upon demand includes, but is not limited to, any of the following:

(1) Addresses and telephone numbers of persons designated by the Franchise Tax Board.

(2) Information contained on Federal Form W-2 (Wage and Tax Statement), Federal Form W-4 (Employee's Withholding Allowance Certificate), or State Form DE-4 (Employee's Withholding Allowance Certificate).

(b) The Franchise Tax Board may require the attendance of the taxpayer or of any other person having knowledge in the premises and may take testimony and require material proof for its information and administer oaths to carry out this part.

(c) The Franchise Tax Board may issue subpoenas or subpoenas duces tecum, which subpoenas must be signed by any member of the Franchise Tax Board and may be served on any person for any purpose.

(d) Obedience to subpoenas or subpoenas duces tecum issued in accordance with this section may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(e) When examining a return, the Franchise Tax Board shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Franchise Tax Board has a reasonable indication that there is a likelihood of unreported income.

(f) The amendments made by the act adding this subdivision shall apply to any examination beginning on or after the effective date of this act.

SEC. 27. Section 19504.5 is added to the Revenue and Taxation Code, to read:

19504.5. (a) (1) Except as provided in subdivision (b), no subpoena may be issued under this part and the Franchise Tax Board may not begin any action under Article 2 (commencing with Section 1180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code to enforce any subpoena to produce or analyze any tax-related computer software source code.

(2) Any software and related materials that are provided to the Franchise Tax Board under this part shall be subject to the safeguards under subdivision (c).

(b) (1) Paragraph (1) of subdivision (a) shall not apply to any portion, item, or component of the tax-related computer software source code if all of the following apply:

(A) The Franchise Tax Board is unable to otherwise reasonably ascertain the correctness of any item on a return from either of the following:

(i) The taxpayer's books, papers, records, or other data.

(ii) The computer software executable code (and any modifications thereof) to which the source code relates and any associated data which, when executed, produces the output to ascertain the correctness of the item.

(B) The Franchise Tax Board identifies with reasonable specificity the portion, item, or component of the source code needed to verify the correctness of the item on the return.

(C) The Franchise Tax Board determines that the need for the portion, item, or component of the source code with respect to the item outweighs the risks of unauthorized disclosure of trade secrets.

(2) Paragraph (1) of subdivision (a) shall not apply to any of the following:

(A) Any inquiry into any offense connected with the administration or enforcement of this part, Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(B) Any tax-related computer software source code acquired or developed by the taxpayer or related person primarily for internal use by the taxpayer or that person rather than for commercial distribution.

(C) Any communications between the owner of the tax-related computer software source code and the taxpayer or related persons.

(D) Any tax-related computer software source code which is required to be provided or made available pursuant to any other provision of this part, Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(3) For purposes of paragraph (1), the Franchise Tax Board shall be treated as meeting the requirements of subparagraphs (A) and (B) of that paragraph if all of the following apply:

(A) The Franchise Tax Board determines that it is not feasible to determine the correctness of an item without access to the computer software executable code and associated data described in clause (ii) of subparagraph (A) of paragraph (1).

(B) The Franchise Tax Board makes a formal request to the taxpayer for the code and data and to the owner of the computer software source code for the executable code.

(C) The code and data are not provided within 180 days of that request.

(4) In any proceeding brought under Article 2 (commencing with Section 1180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code to enforce a subpoena issued under the authority of this subdivision, the court shall, at the request of any party, hold

a hearing to determine whether the applicable requirements of this section have been met.

(c) (1) In any court proceeding to enforce a subpoena for any portion of software, the court may receive evidence and issue any order necessary to prevent the disclosure of trade secrets or other confidential information with respect to that software, including requiring that any information be placed under seal to be opened only as directed by the court.

(2) Notwithstanding any other provision of this section, and in addition to any protections ordered pursuant to paragraph (1), in the case of software that comes into the possession or control of the Franchise Tax Board in the course of any examination with respect to any taxpayer, all of the following shall apply:

(A) The software may be used only in connection with the examination of that taxpayer's return, any protest or appeal by the taxpayer, any judicial proceeding and any appeals therefrom, or any inquiry into any offense connected with the administration or enforcement of this part, Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(B) The Franchise Tax Board shall provide, in advance, to the taxpayer and the owner of the software a written list of the names of all individuals who will analyze or otherwise have access to the software.

(C) (i) The software shall be maintained in a secure area or place, and in the case of computer software source code, shall not be removed from the owner's place of business unless the owner permits, or a court orders, that removal.

(ii) For purposes of clause (i), the owner shall make available any necessary equipment or materials for analysis of computer software source code required to be conducted on the owner's premises.

(D) The software may not be copied except as necessary to perform an analysis, and the Franchise Tax Board shall number all copies made and certify in writing that no other copies have been or will be made.

(E) At the end of the period during which the software may be used under subparagraph (A), both of the following apply:

(i) The software and all copies thereof shall be returned to the person from whom they were obtained and any copies thereof made under subparagraph (D) on the hard drive of a machine or other mass storage device shall be permanently deleted.

(ii) The Franchise Tax Board shall obtain from any person who analyzes or otherwise had access to that software a written certification under penalty of perjury that all copies and related materials have been returned and that no copies were made of them.

(F) The software may not be decompiled or disassembled.

(G) (i) The Franchise Tax Board shall provide to the taxpayer and the owner of any interest in the software, as the case may be, a

written agreement, between the Franchise Tax Board and any person who is not an officer or employee of the State of California and who will analyze or otherwise have access to that software, which provides that the person agrees not to do either of the following:

(I) Disclose the software to any person other than persons to whom the information could be disclosed for tax administration purposes under Section 19542.

(II) Participate for two years in the development of software which is intended for a similar purpose as the software examined.

(ii) The owner of any interest in the software shall be considered a party to any agreement described in clause (i).

(H) The software shall be treated as return information for purposes of Section 19542.

(d) For purposes of this section:

(1) "Software" includes computer software source code and computer software executable code.

(2) "Computer software source code" means all of the following:

(A) The code written by a programmer using a programming language which is comprehensible to appropriately trained persons and is not capable of directly being used to give instructions to a computer.

(B) Related programmers' notes, design documents, memoranda, and similar documentation.

(C) Related customer communications.

(3) "Computer software executable code" means both of the following:

(A) Any object code, machine code, or other code readable by a computer when loaded into its memory and used directly by the computer to execute instructions.

(B) Any related user manuals.

(4) "Owner" includes, with respect to any software, the developer of the software.

(5) A person shall be treated as related to another person if the persons are related persons under Section 267 or 707(b) of the Internal Revenue Code.

(6) "Tax-related computer software source code" means the computer source code for any computer software program intended for accounting, tax return preparation or compliance, or tax planning.

(e) This section and Section 19542.3 shall not apply to any software acquired or developed for internal use by the Franchise Tax Board.

(f) This section shall apply to subpoenas issued, and software acquired, after the effective date of the act adding this section. In the case of any software acquired on or before the effective date of the act adding this section, the requirements of paragraph (2) of subdivision (a) shall apply after the 90th day after the effective date of the act adding this section. The preceding sentence shall not apply

to the requirement under clause (ii) of subparagraph (G) of paragraph (2) of subdivision (c).

SEC. 28. Section 19504.7 is added to the Revenue and Taxation Code, to read:

19504.7. (a) An officer or employee of the Franchise Tax Board may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of the taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made. The notice shall explain that a request may be made as provided in subdivision (b). A notice shall be valid for any third-party contacts made during the 12 months following the date of the notice. For any third-party contacts made after the expiration of the 12 months, an additional preliminary notice must be provided. This subdivision shall not apply if mail to the same address is returned undeliverable with no forwarding address. 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 with respect to that described preexisting unpaid tax of the person.

(b) The Franchise Tax Board shall provide, upon request from the taxpayer, a record of persons contacted during that 12-month period by the Franchise Tax Board with respect to the determination or collection of the tax liability of the taxpayer. The taxpayer's request shall be made no later than 60 days after the 12-month period has expired.

(c) This section shall not apply:

(1) To any contact which the taxpayer has authorized.

(2) If the Franchise Tax Board determines for good cause shown that the notice would jeopardize collection of any tax or the notice may involve reprisal against any person.

(3) With respect to any pending criminal investigation.

(d) This section shall be operative for contacts made after 180 days after the effective date of the act adding this section.

SEC. 30. Section 19542.3 is added to the Revenue and Taxation Code, to read:

19542.3. Any person who willfully divulges or makes known software, as defined in paragraph (1) of subdivision (d) of Section 19504.5, to any person in violation of Section 19504.5 is punishable by imprisonment in the county jail not to exceed one year, or in the state prison not to exceed five years, at the discretion of the court or by fine of not more than five thousand dollars ($5,000), or by both the fines and imprisonment, at the discretion of the court, together with the costs of investigation and prosecution.

SEC. 31. Section 19546.5 is added to the Revenue and Taxation Code, to read:

19546.5. Any person who otherwise has or had access to any return or return information may disclose the return or return

information to a committee appointed by the Assembly or Senate, or both, or any member, clerk, or other officer or employee thereof, if the person believes the return or return information may relate to possible board misconduct, maladministration, or taxpayer abuse.

SEC. 32. Section 19705 of the Revenue and Taxation Code is amended to read:

19705. (a) Any person who does any of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned not more than three years, or both, together with the costs of investigation and prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that it is made under penalty of perjury, and he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Personal Income Tax Law or the Bank and Corporation Tax Law, of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Personal Income Tax Law or the Bank and Corporation Tax Law, or by any regulation pursuant to that law, or procures the same to be falsely or fraudulently executed or advises, aids in, or connives at that execution.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 5 (commencing with Section 19201); or Chapter 8 (commencing with Section 688.010) of Division 1 of, and Chapter 5 (commencing with Section 706.010) of Division 2 of, Title 9 of the Code of Civil Procedure, with intent to evade or defeat the assessment or collection of any tax, additions to tax, penalty, or interest imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(5) In connection with any settlement under Section 19442, or offer of that settlement, or in connection with any closing agreement under Section 19441 or offer to enter into that agreement, or compromise under Section 19443, or offer of that compromise, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) In the case of a corporation, the fifty thousand dollars ($50,000) limitation specified in subdivision (a) shall be increased to two hundred thousand dollars ($200,000).

(c) The fact that an individual's name is signed to a return, statement, or other document filed, including a return, statement, or other document filed using electronic technology pursuant to Section 18621.5, shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(d) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or which owns or controls the taxpayer, directly or indirectly.

(e) The changes made to this section by the act adding this subdivision apply to offers made on or after January 1, 1999.

SEC. 33. Section 19717 of the Revenue and Taxation Code is amended to read:

19717. (a) The prevailing party may be awarded a judgment for reasonable litigation costs incurred, in the case of any civil proceeding brought by or against the State of California in a court of record of this state in connection with the determination, collection, or refund of any tax, interest, or penalty under this part.

(b) (1) A judgment for reasonable litigation costs shall not be awarded under subdivision (a) unless the court determines that the prevailing party has exhausted all administrative remedies available to that party under this part, including the filing of an appeal as provided in Section 19324. Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence.

(2) An award under subdivision (a) shall be made only for reasonable litigation costs which are allocable to the State of California and not to any other party to the action or proceeding.

(3) No award for reasonable litigation costs may be made under subdivision (a) with respect to any portion of the civil proceeding during which the prevailing party has unreasonably protracted that proceeding.

(c) For purposes of this section:

(1) "Reasonable litigation costs" includes any of the following:

(A) Reasonable court costs.

(B) Based upon prevailing market rates for the kind or quality of services furnished, any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of one hundred twenty-five dollars ($125) per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceeding, the difficulty of the issues presented in the case, or the local availability of tax expertise justifies a higher rate. In the case of each calendar year beginning with calendar year 2001, the Franchise Tax Board shall recompute the dollar amount referred to in the preceding sentence. That computation shall be made by increasing the amount in this clause by an amount equal to the cost-of-living adjustment determined under subdivision (h) of Section 17041. If any resulting dollar amount is not a multiple of ten dollars ($10), that dollar amount shall be rounded to the nearest multiple of ten dollars ($10).

(iv) The court may award reasonable attorney fees under subdivision (a) in excess of the attorney fees paid or incurred if the fees are less than the reasonable attorneys' fees because the attorney is representing the prevailing party for no fee or for a fee which (taking into account all the facts and circumstances) is no more than a nominal fee. This clause shall apply only if the award is paid to the attorney or the attorney's employer.

(2) (A) "Prevailing party" means any party to any proceeding described in subdivision (a) (other than the State of California or any creditor of the taxpayer involved) that meets either of the following criteria:

(i) Has substantially prevailed with respect to the amount in controversy.

(ii) Has substantially prevailed with respect to the most significant issue or set of issues presented.

(B) (i) A party shall not be treated as the prevailing party in a proceeding to which subdivision (a) applies if the State of California establishes that its position in the proceeding was substantially justified.

(ii) For purposes of clause (i), the position of the State of California shall be presumed not to be substantially justified if the Franchise Tax Board did not follow its applicable published guidance in the administrative proceeding. This presumption may be rebutted.

(iii) For purposes of clause (ii), the term "applicable published guidance" means either of the following:

(I) A regulation, legal ruling, notice, information release, or announcement.

(II) Any chief counsel ruling or determination letter issued to the taxpayer.

(iv) For purposes of clause (i), in determining whether the position of the Franchise Tax Board was substantially justified, the court shall take into account whether the Franchise Tax Board has lost in any California Court of Appeal in another district on substantially similar issues, as reflected in a decision certified for publication.

(C) Any determination under this paragraph as to whether a party is a prevailing party shall be made by either of the following:

(i) The court.

(ii) An agreement of the parties.

(3) The term "civil proceeding" includes a civil action.

(d) For purposes of this section, in the case of multiple actions which could have been joined or consolidated, or a case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single proceeding in the same court, the actions or cases shall be treated as one civil proceeding regardless of whether the joinder or consolidation actually occurs, unless the court in which the action is brought determines, in its discretion, that it would be inappropriate to treat the actions or cases as joined or consolidated for purposes of this section.

(e) An order granting or denying an award for reasonable litigation costs under subdivision (a), in whole or in part, shall be incorporated as a part of the decision or judgment in the case and shall be subject to appeal in the same manner as the decision or judgment.

(f) For purposes of this section, "position of the State of California" includes either of the following:

(1) The position taken by the State of California in the civil proceeding.

(2) Any administrative action or inaction by the Franchise Tax Board (and all subsequent administrative action or inaction) upon which that proceeding is based.

(g) The amendments made by the act amending this subdivision are effective for costs incurred and services performed more than 180 days after the effective date of the act amending this subdivision.

SEC. 34. Section 21013 of the Revenue and Taxation Code is amended to read:

21013. (a) (1) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to an appeal before the State Board of Equalization if all of the following conditions are met:

(A) The taxpayer files a claim for the fee and expenses with the State Board of Equalization.

(B) The State Board of Equalization, in its sole discretion, finds that the action taken by the Franchise Tax Board staff was unreasonable.

(2) For purposes of this section:

(A) Fees and expenses related to an appeal before the State Board of Equalization do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board's written statement of its position has been submitted to the State Board of Equalization.

(B) Fees may be awarded in excess of the fees paid or incurred if the fees are less than the reasonable fees because an individual representing the taxpayer is entitled to be reimbursed for no fee or for a fee which, taking into account all the facts and circumstances, is no more than a nominal fee. This subparagraph shall apply only if the award is paid to the individual or the individual's employer.

(b) (1) To determine whether the Franchise Tax Board staff has been unreasonable, the State Board of Equalization shall consider whether the Franchise Tax Board has established that its position in the appeal was substantially justified.

(2) For purposes of paragraph (1), the position of the Franchise Tax Board shall be presumed not to be substantially justified if its staff did not follow its applicable published guidance in the appeal. This presumption may be rebutted.

(3) For purposes of paragraph (2), the term "applicable published guidance" means either of the following:

(A) A regulation, legal ruling, notice, information release, or announcement.

(B) Any chief counsel ruling or determination letter issued to a taxpayer.

(c) The amount of reimbursed fees and expenses shall be determined by the State Board of Equalization and shall be limited to the following:

(1) Fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund.

(2) If the State Board of Equalization finds that the Franchise Tax Board staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the Franchise Tax Board staff was unreasonable.

(d) Any proposed determination by the State Board of Equalization pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of that determination.

(e) The amendments made by the act amending this subdivision are effective for fees and expenses incurred more than 180 days after the effective date of the act amending this subdivision.

SEC. 34.5. Section 21013 of the Revenue and Taxation Code is amended to read:

21013. (a) (1) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to an appeal before the State Board of Equalization if all of the following conditions are met:

(A) The taxpayer files a claim for the fee and expenses with the State Board of Equalization.

(B) The State Board of Equalization, in its sole discretion, finds that the action taken by the Franchise Tax Board staff was unreasonable.

(2) For purposes of this section:

(A) Fees and expenses related to an appeal before the State Board of Equalization do not include fees and expenses incurred in cases where an appeal has been filed, but resolved before the Franchise Tax Board's written statement of its position has been submitted to the State Board of Equalization.

(B) Fees may be awarded in excess of the fees paid or incurred if the fees are less than the reasonable fees because an individual representing the taxpayer is entitled to be reimbursed for no fee or for a fee which, taking into account all the facts and circumstances, is no more than a nominal fee. This subparagraph shall apply only if the award is paid to the individual or the individual's employer.

(b) (1) To determine whether the Franchise Tax Board staff has been unreasonable, the State Board of Equalization shall consider whether the Franchise Tax Board has established that its position in the appeal was substantially justified.

(2) For purposes of paragraph (1), the position of the Franchise Tax Board shall be presumed not to be substantially justified if its staff did not follow its applicable published guidance in the appeal. This presumption may be rebutted.

(3) For purposes of paragraph (2), the term "applicable published guidance" means either of the following:

(A) A regulation, legal ruling, notice, information release, or announcement.

(B) Any chief counsel ruling or determination letter issued to a taxpayer.

(c) The amount of reimbursed fees and expenses shall be determined by the State Board of Equalization and shall be limited to the following:

(1) Fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund, including fees and expenses incurred at the hearing specified in subdivision (e).

(2) If the State Board of Equalization finds that the Franchise Tax Board staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the Franchise Tax Board staff was unreasonable.

(d) Any proposed determination by the State Board of Equalization pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of that determination.

(e) Every taxpayer who files a claim for reimbursement of fees and expenses under this section shall be granted an oral hearing before the State Board of Equalization, unless that taxpayer has waived the oral hearing in writing, or unless the State Board of Equalization or the Franchise Tax Board concedes the underlying tax appeal and agrees to the reimbursement of fees and expenses. The State Board of Equalization shall give the taxpayer 60 days' notice of the time and place of the hearing. The State Board of Equalization may continue the hearing from time to time as may be necessary.

(f) (1) Except as provided in paragraph (2), the amendments made by the act adding this subdivision are effective for fees and expenses incurred more than 180 days after the effective date of the act adding this subdivision.

(2) Subdivision (e), relating to the oral hearing before the State Board of Equalization, shall be operative for fees and expenses related to appeals filed on or after January 1, 2000.

SEC. 35. Section 21016 of the Revenue and Taxation Code is amended to read:

21016. (a) The board shall release any levy issued pursuant to Part 10.2 (commencing with Section 18401) on any property in the event of any circumstances deemed appropriate by the board, including, but not limited to, the following:

(1) The expense of the sale process to the state exceeds the liability for which the levy is made.

(2) The Taxpayers' Rights Advocate orders the release of the levy upon his or her finding that the levy threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(3) The proceeds from the sale would not result in a reasonable reduction of the debt.

(4) The levy was issued not in accordance with administrative procedures.

(5) The taxpayer has entered into an installment payment agreement under Section 19008 to satisfy the tax liability for which the levy was made, unless that or another agreement allows for the levy.

(6) The release of the levy will facilitate the collection of the tax liability or will be in the best interest of the taxpayer and the state.

(b) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment authorized by Article 5 (commencing with Section 19081) of Chapter 4 of Part 10.2.

(d) In the case of a levy on salary or wages payable to or received by the taxpayer, in accordance with Chapter 5 (commencing with Section 706.010) of Division 2 of Title 9 of the Code of Civil Procedure, upon agreement with the taxpayer that the tax is not collectible, the board shall release the levy as soon as practicable. This subdivision shall not apply if the debt for which the levy is issued has been discharged from collectibility pursuant to Section 16301.6 of the Government Code, except if the debt is satisfied.

(e) The amendments made by the act adding this subdivision are operative for salary or wages subject to levy on or after the effective date of the act adding this subdivision.

SEC. 36. The amendments made by this act to Section 17053.5 of the Revenue and Taxation Code and the repeal of Section 19052 of the Revenue and Taxation Code shall be operative for taxable years beginning on or after January 1, 1998.

SEC. 37. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 39. Section 34.5 of this bill incorporates amendments to Section 21013 of the Revenue and Taxation Code proposed by both this bill and SB 299. 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 21013 of the Revenue and Taxtation Code, and (3) this bill is enacted after SB 299, in which case Section 21013 of the Revenue and Taxation Code, as amended by Section 34 of this bill, shall remain operative only until the operative date of SB 299, at which time Section 34.5 of this bill shall become operative.

SEC. 40. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 932

An act to amend Section 3111 of, and to add Section 3110.5 to, the Family Code, relating to family law.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 3110.5 is added to the Family Code, to read:

3110.5. (a) No person shall be a court-connected or private child custody evaluator under this chapter unless the person has completed the domestic violence training program described in Section 1816 and has complied with Rules 1257.3 and 1257.7 of the California Rules of Court.

(b) (1) On or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Section 2032 of the Code of Civil Procedure.

(2) The rule shall require a child custody evaluator to declare under penalty of perjury that he or she meets all of the education, experience, and training requirements specified in the rule and, if applicable, possesses a license in good standing. The Judicial Council shall establish forms to implement this section. The rule shall permit court-connected evaluators to conduct evaluations if they meet all of the qualifications established by the Judicial Council. The education, experience, and training requirements to be specified for court-connected evaluators shall include, but shall not be limited to, knowledge of the psychological and developmental needs of children and parent-child relationships.

(3) The rule shall require all evaluators to utilize comparable interview, assessment, and testing procedures for all parties that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. The rule shall also require evaluators to inform each adult party of the purpose, nature, and method of the evaluation.

(4) The rule may allow courts to permit the parties to stipulate to an evaluator of their choosing with the approval of the court under the circumstances set forth in subdivision (d). The rule may require courts to provide general information about how parties can contact qualified child custody evaluators in their county.

(c) In addition to the education, experience, and training requirements established by the Judicial Council pursuant to subdivision (b), on or after January 1, 2005, no person shall be a child custody evaluator under this chapter, Section 730 of the Evidence Code, or Section 2032 of the Code of Civil Procedure unless the person meets one of the following criteria:

(1) He or she is licensed as a physician under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and either is a board certified psychiatrist or has completed a residency in psychiatry.

(2) He or she is licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(3) He or she is licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(4) He or she is licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(5) He or she is a court-connected evaluator who has been certified by the court as meeting all of the qualifications for court-connected evaluators as specified by the Judicial Council pursuant to subdivision (b).

(d) Subdivision (c) shall not apply in any case where the court determines that there are no evaluators who meet the criteria of subdivision (c) who are willing and available, within a reasonable period of time, to perform child custody evaluations. In those cases, the parties may stipulate to an individual who does not meet the criteria of subdivision (c), subject to approval by the court.

(e) A child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that licensee.

SEC. 2. Section 3111 of the Family Code is amended to read:

3111. (a) In any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child. The child custody evaluation shall be conducted in accordance with the standards adopted by the Judicial Council pursuant to Section 3117, and all other standards adopted by the Judicial Council regarding child custody evaluations. Where directed by the court, the court-appointed child custody evaluator shall file a written confidential report on his or her evaluation. At least 10 days before any hearing regarding custody of the child, the report shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys. The report may be considered by the court.

(b) The report shall not be made available other than as provided in subdivision (a).

(c) The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report.

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.

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CHAPTER 933

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 October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. The total sum of one million seven hundred eighty-seven thousand two hundred fifty-three dollars and twenty-nine cents ($1,787,253.29) is hereby appropriated as follows:

(a) The sum of seven hundred eighty-nine thousand seven hundred fifty-three dollars and thirty-three cents ($789,753.33) from the General Fund to the Attorney General for allocation to pay damages and attorney fees, including interest, awarded in the case of Kwasi Opuku-Boateng v. State of California, et al. (United States District Court, Eastern District, Case No. S-87-755 MLS).

(b) The sum of nine hundred ninety-seven thousand four hundred ninety-nine dollars and ninety-six cents ($997,499.96) from the Motor Vehicle Account in the State Transportation Fund to the Attorney General for allocation to pay damages, including interest, awarded in the case of Mary Shaver v. State, et al. (Superior Court, San Bernardino County, Case No. SCV 38442, and United States District Court, Central District, Case No. ED-CV-96-0445 RT).

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 pay judgments and settlement claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 934

An act to amend Section 1596.8713 of, and to add Section 1596.8714 to, the Health and Safety Code, relating to care facilities.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. 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) (1) Between January 1, 2000, and July 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 a volunteer at a child care facility who is required to be fingerprinted pursuant to subdivision (b) of Section 1596.871.

(2) On or after July 1, 2000, no fee shall be charged for the purposes specified in paragraph (1) if funds for those purposes are appropriated in the annual Budget Act.

(3) For purposes of this subdivision, "volunteer" means a person who provides services at a child care facility and does not receive any payment of a salary or hourly wage in exchange for these services.

SEC. 2. Section 1596.8714 is added to the Health and Safety Code, to read:

1596.8714. On or before March 1, 2000, the State Department of Social Services shall convene a workgroup to review current criminal background check requirements and processes for screening care providers. The workgroup shall study and make recommendations concerning improving the coordination of the different populations who are required to undergo multiple criminal background checks, methods to reduce the costs, and expedite the process of conducting criminal background checks. The workgroup shall include representatives from the various departments within the California Health and Human Services Agency, the Department of Justice, the Child Care Resource and Referral Network, and care provider organizations.

CHAPTER 935

An act to amend Sections 30163 and 30436 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 30163 of the Revenue and Taxation Code is amended to read:

30163. (a) Except as otherwise provided in this section, an appropriate stamp shall be affixed to, or an appropriate meter impression shall be made on each package of cigarettes prior to the distribution of the cigarettes.

(b) No stamp or meter impression may be affixed to, or made upon, any package of cigarettes if any one of the following occurs:

(1) The package does not comply with all requirements of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 and following) for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States.

(2) The package is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or similar wording indicating that the manufacturer did not intend that the product be sold in the United States.

(3) The package, or a package containing individually stamped packages, has been altered by adding or deleting the wording, labels, or warnings described in paragraph (1) or (2).

(4) The package was imported into the United States after January 1, 2000, in violation of Section 5754 of Title 26 of the United States Code.

(c) Pursuant to its authority under Section 30148, the board shall revoke the license issued to a distributor that is determined to be in violation of this section.

(d) A violation of subdivision (b) shall constitute unfair competition under Section 17200 of the Business and Professions Code.

SEC. 2. Section 30436 of the Revenue and Taxation Code is amended to read:

30436. The following property, upon seizure by the board, is hereby forfeited to the State of California:

(a) Cigarettes or tobacco products transported upon the highways, roads or streets of this state in violation of the provisions of Section 30431 or Section 30432.

(b) Cigarettes not contained in packages to which are affixed California cigarette tax stamp or meter impressions or tobacco products upon which the tobacco products surtax has not been paid, which are offered for sale, possessed, kept, stored or owned by any person with the intent of the person to sell the cigarettes or tobacco products without payment of the taxes imposed by this part.

(c) Any cigarette or tobacco product vending machine, together with the cigarettes, tobacco products, money or other contents thereof, which has been loaded in whole or in part with packages of cigarettes which do not have California cigarette tax stamps or meter impressions affixed or tobacco products upon which the tobacco products surtax has not been paid.

(d) Cigarettes contained in packages that are stamped or metered in violation of Section 30163.

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 State Board of Equalization to properly enforce the Cigarette and Tobacco Products Tax Law, it is necessary that this act take effect immediately.

CHAPTER 936

An act to amend Section 63010 of the Government Code, relating to infrastructure finance.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 63010 of the Government Code is amended to read:

63010. For purposes of this division, the following words and terms shall have the following meanings unless the context clearly indicates or requires another or different meaning or intent:

(a) "Act" means the Bergeson-Peace Infrastructure and Economic Development Bank Act.

(b) "Bank" means the California Infrastructure and Economic Development Bank.

(c) "Board" or "bank board" means the Board of Directors of the California Infrastructure and Economic Development Bank.

(d) "Bond purchase agreement" means a contractual agreement executed between the bank and a sponsor, or a special purpose trust authorized by the bank or a sponsor, or both, whereby the bank or special purpose trust authorized by the bank agrees to purchase bonds of the sponsor for retention or sale.

(e) "Bonds" means bonds, including structured, senior, and subordinated bonds or other securities; loans; notes, including bond, revenue, tax or grant anticipation notes; commercial paper; floating rate and variable maturity securities; and any other evidences of indebtedness or ownership, including certificates of participation or

beneficial interest, asset backed certificates, or lease-purchase or installment purchase agreements, whether taxable or excludable from gross income for federal income taxation purposes.

(f) "Cost," as applied to a project or portion thereof financed under this division, means all or any part of the cost of construction, renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, licenses, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved; the cost of all machinery, equipment, and financing charges; interest prior to, during, and for a period after, completion of construction, renovation, or acquisition, as determined by the bank; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; and the cost of architectural, engineering, financial and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of any project or incidental to the construction, acquisition, or financing of any project, and transition costs in the case of an electrical corporation.

(g) "Economic development facilities" means real and personal property, structures, buildings, equipment, and supporting components thereof that are used to provide industrial, recreational, research, commercial, utility, or service enterprise facilities, community, educational, cultural, or social welfare facilities and any parts or combinations thereof, and all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital, but shall not include any housing.

(h) "Electrical corporation" has the meaning set forth in Section 218 of the Public Utilities Code.

(i) "Executive director" means the Executive Director of the California Infrastructure and Economic Development Bank appointed pursuant to Section 63021.

(j) "Financial assistance" in connection with a project, includes, but is not limited to, any combination of grants, loans, the proceeds of bonds issued by the bank or special purpose trust, insurance, guarantees or other credit enhancements or liquidity facilities, and contributions of money, property, labor, or other things of value, as may be approved by resolution of the board or the sponsor, or both; the purchase or retention of bank bonds, the bonds of a sponsor for their retention or for sale by the bank, or the issuance of bank bonds or the bonds of a special purpose trust used to fund the cost of a project for which a sponsor is directly or indirectly liable, including, but not limited to, bonds, the security for which is provided in whole or in part pursuant to the powers granted by Section 63025; bonds for which the bank has provided a guarantee or enhancement, including, but not limited to, the purchase of the subordinated bonds of the

sponsor, the subordinated bonds of a special purpose trust, or the retention of the subordinated bonds of the bank pursuant to Chapter 4 (commencing with Section 63060); or any other type of assistance deemed appropriate by the bank or the sponsor, except that no direct loans shall be made to nonpublic entities other than in connection with the issuance of rate reduction bonds pursuant to a financing order or in connection with a financing for an economic development facility.

For purposes of this subdivision, "grant" does not include grants made by the bank except when acting as an agent or intermediary for the distribution or packaging of financing available from federal, private, or other public sources.

(k) "Financing order" has the meaning set forth in Section 840 of the Public Utilities Code.

(*l*) "Guarantee trust fund" means the California Infrastructure Guarantee Trust Fund.

(m) "Infrastructure bank fund" means the California Infrastructure and Economic Development Bank Fund.

(n) "Loan agreement" means a contractual agreement executed between the bank or a special purpose trust and a sponsor that provides that the bank or special purpose trust will loan funds to the sponsor and that the sponsor will repay the principal and pay the interest and redemption premium, if any, on the loan.

(o) "Participating party" means any person, company, corporation, partnership, firm, or other entity or group of entities, whether organized for profit or not for profit, engaged in business or operations within the state and that applies for financing from the bank in conjunction with a sponsor for the purpose of implementing a project. However, in the case of a project relating to the financing of transition costs or the acquisition of transition property, or both, on the request of an electrical corporation, or in connection with a financing for an economic development facility, the participating party shall be deemed to be the same entity as the sponsor for the financing.

(p) "Project" means designing, acquiring, planning, permitting, entitling, constructing, improving, extending, restoring, financing, and generally developing public development facilities or economic development facilities within the state or financing transition costs or the acquisition of transition property, or both, upon approval of a financing order by the Public Utilities Commission, as provided in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(q) "Public development facilities" means real and personal property, structures, conveyances, equipment, thoroughfares, buildings, and supporting components thereof, excluding any housing, that are directly related to providing the following:

(1) "City streets" including any street, avenue, boulevard, road, parkway, drive, or other way that is any of the following:

(A) An existing municipal roadway.

(B) Is shown upon a plat approved pursuant to law and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(2) "County highways" including any county highway as defined in Section 25 of the Streets and Highways Code, that includes the land between the highway lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(3) "Drainage and flood control" including ditches, canals, levees, pumps, dams, conduits, pipes, storm sewers, and dikes necessary to keep or direct water away from people, equipment, buildings, and other protected areas as may be established by lawful authority, as well as the acquisition, improvement, maintenance, and management of floodplain areas and all equipment used in the maintenance and operation of the foregoing.

(4) "Educational facilities" including libraries, child care facilities, including, but not limited to, day care facilities, and employment training facilities.

(5) "Environmental mitigation measures" including required construction or modification of public infrastructure and purchase and installation of pollution control and noise abatement equipment.

(6) "Parks and recreational facilities" including local parks, recreational property and equipment, parkways and property.

(7) "Port facilities" including docks, harbors, ports of entry, piers, ships, small boat harbors and marinas, and any other facilities, additions, or improvements in connection therewith.

(8) "Power and communications" including facilities for the transmission or distribution of electrical energy, natural gas, and telephone and telecommunications service.

(9) "Public transit" including air and rail transport of goods, airports, guideways, vehicles, rights-of-way, passenger stations, maintenance and storage yards, and related structures, including public parking facilities, equipment used to provide or enhance transportation by bus, rail, ferry, or other conveyance, either publicly or privately owned, that provides to the public general or special service on a regular and continuing basis.

(10) "Sewage collection and treatment" including pipes, pumps, and conduits that collect wastewater from residential, manufacturing, and commercial establishments, the equipment, structures, and facilities used in treating wastewater to reduce or

eliminate impurities or contaminants, and the facilities used in disposing of, or transporting, remaining sludge, as well as all equipment used in the maintenance and operation of the foregoing.

(11) "Solid waste collection and disposal" including vehicles, vehicle-compatible waste receptacles, transfer stations, recycling centers, sanitary landfills, and waste conversion facilities necessary to remove solid waste, except that which is hazardous as defined by law, from its point of origin.

(12) "Water treatment and distribution" including facilities in which water is purified and otherwise treated to meet residential, manufacturing, or commercial purposes and the conduits, pipes, and pumps that transport it to places of use.

(13) "Defense conversion" including, but not limited to, facilities necessary for successfully converting military bases consistent with an adopted base reuse plan.

(14) "Public safety facilities" including, but not limited to, police stations, fire stations, court buildings, jails, juvenile halls, and juvenile detention facilities.

(15) "State highways" including any state highway as described in Chapter 2 (commencing with Section 230) of Division 1 of the Streets and Highways Code, and the related components necessary for safe operation of the highway.

(r) "Rate reduction bonds" has the meaning set forth in Section 840 of the Public Utilities Code.

(s) "Revenues" means all receipts, purchase payments, loan repayments, lease payments, and all other income or receipts derived by the bank or a sponsor from the sale, lease, or other financing arrangement undertaken by the bank, a sponsor or a participating party, including, but not limited to, all receipts from a bond purchase agreement, and any income or revenue derived from the investment of any money in any fund or account of the bank or a sponsor and any receipts derived from transition property. Revenues shall not include moneys in the General Fund of the state.

(t) "Special purpose trust" means a trust, partnership, limited partnership, association, corporation, nonprofit corporation, or other entity authorized under the laws of the state to serve as an instrumentality of the state to accomplish public purposes and authorized by the bank to acquire, by purchase or otherwise, for retention or sale, the bonds of a sponsor or of the bank made or entered into pursuant to this division and to issue special purpose trust bonds or other obligations secured by these bonds or other sources of public or private revenues. Special purpose trust also means any entity authorized by the bank to acquire transition property or to issue rate reduction bonds, or both, subject to the approvals by the bank and powers of the bank as are provided by the bank in its resolution authorizing the entity to issue rate reduction bonds.

(u) "Sponsor" means any subdivision of the state or local government including departments, agencies, commissions, cities, counties, nonprofit corporations formed on behalf of a sponsor, special districts, assessment districts, and joint powers authorities within the state or any combination of these subdivisions that has, or proposes to acquire, an interest in a project and that makes application to the bank for financial assistance in connection with a project in a manner prescribed by the bank. In addition, an electrical corporation shall be deemed to be the sponsor as well as the participating party for any project relating to the financing of transition costs and the acquisition of transition property on the request of the electrical corporation and any person, company, corporation, partnership, firm, or other entity or group engaged in business or operation within the state that applies for financing of any economic development facility, shall be deemed to be the sponsor as well as the participating party for the project relating to the financing of that economic development facility.

(v) "State" means the State of California.

(w) "Transition costs" has the meaning set forth in Section 840 of the Public Utilities Code.

(x) "Transition property" has the meaning set forth in Section 840 of the Public Utilities Code.

SEC. 2. Section 63010 of the Government Code is amended to read:

63010. For purposes of this division, the following words and terms shall have the following meanings unless the context clearly indicates or requires another or different meaning or intent:

(a) "Act" means the Bergeson-Peace Infrastructure and Economic Development Bank Act.

(b) "Bank" means the California Infrastructure and Economic Development Bank.

(c) "Board" or "bank board" means the Board of Directors of the California Infrastructure and Economic Development Bank.

(d) "Bond purchase agreement" means a contractual agreement executed between the bank and a sponsor, or a special purpose trust authorized by the bank or a sponsor, or both, whereby the bank or special purpose trust authorized by the bank agrees to purchase bonds of the sponsor for retention or sale.

(e) "Bonds" means bonds, including structured, senior, and subordinated bonds or other securities; loans; notes, including bond, revenue, tax or grant anticipation notes; commercial paper; floating rate and variable maturity securities; and any other evidences of indebtedness or ownership, including certificates of participation or beneficial interest, asset backed certificates, or lease-purchase or installment purchase agreements, whether taxable or excludable from gross income for federal income taxation purposes.

(f) "Cost," as applied to a project or portion thereof financed under this division, means all or any part of the cost of construction,

renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, licenses, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved; the cost of all machinery, equipment, and financing charges; interest prior to, during, and for a period after, completion of construction, renovation, or acquisition, as determined by the bank; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; and the cost of architectural, engineering, financial and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of any project or incidental to the construction, acquisition, or financing of any project, and transition costs in the case of an electrical corporation.

(g) "Economic development facilities" means real and personal property, structures, buildings, equipment, and supporting components thereof that are used to provide industrial, recreational, research, commercial, utility, or service enterprise facilities, community, educational, cultural, or social welfare facilities and any parts or combinations thereof, and all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital, but shall not include any housing.

(h) "Electrical corporation" has the meaning set forth in Section 218 of the Public Utilities Code.

(i) "Executive director" means the Executive Director of the California Infrastructure and Economic Development Bank appointed pursuant to Section 63021.

(j) "Financial assistance" in connection with a project, includes, but is not limited to, any combination of grants, loans, the proceeds of bonds issued by the bank or special purpose trust, insurance, guarantees or other credit enhancements or liquidity facilities, and contributions of money, property, labor, or other things of value, as may be approved by resolution of the board or the sponsor, or both; the purchase or retention of bank bonds, the bonds of a sponsor for their retention or for sale by the bank, or the issuance of bank bonds or the bonds of a special purpose trust used to fund the cost of a project for which a sponsor is directly or indirectly liable, including, but not limited to, bonds, the security for which is provided in whole or in part pursuant to the powers granted by Section 63025; bonds for which the bank has provided a guarantee or enhancement, including, but not limited to, the purchase of the subordinated bonds of the sponsor, the subordinated bonds of a special purpose trust, or the retention of the subordinated bonds of the bank pursuant to Chapter 4 (commencing with Section 63060); or any other type of assistance deemed appropriate by the bank or the sponsor, except that no direct loans shall be made to nonpublic entities other than in connection

with the issuance of rate reduction bonds pursuant to a financing order or in connection with a financing for an economic development facility.

For purposes of this subdivision, "grant" does not include grants made by the bank except when acting as an agent or intermediary for the distribution or packaging of financing available from federal, private, or other public sources.

(k) "Financing order" has the meaning set forth in Section 840 of the Public Utilities Code.

(*l*) "Guarantee trust fund" means the California Infrastructure Guarantee Trust Fund.

(m) "Infrastructure bank fund" means the California Infrastructure and Economic Development Bank Fund.

(n) "Loan agreement" means a contractual agreement executed between the bank or a special purpose trust and a sponsor that provides that the bank or special purpose trust will loan funds to the sponsor and that the sponsor will repay the principal and pay the interest and redemption premium, if any, on the loan.

(o) "Participating party" means any person, company, corporation, partnership, firm, or other entity or group of entities, whether organized for profit or not for profit, engaged in business or operations within the state and that applies for financing from the bank in conjunction with a sponsor for the purpose of implementing a project. However, in the case of a project relating to the financing of transition costs or the acquisition of transition property, or both, on the request of an electrical corporation, or in connection with a financing for an economic development facility, the participating party shall be deemed to be the same entity as the sponsor for the financing.

(p) "Project" means designing, acquiring, planning, permitting, entitling, constructing, improving, extending, restoring, financing, and generally developing public development facilities or economic development facilities within the state or financing transition costs or the acquisition of transition property, or both, upon approval of a financing order by the Public Utilities Commission, as provided in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(q) "Public development facilities" means real and personal property, structures, conveyances, equipment, thoroughfares, buildings, and supporting components thereof, excluding any housing, that are directly related to providing the following:

(1) "City streets" including any street, avenue, boulevard, road, parkway, drive, or other way that is any of the following:

(A) An existing municipal roadway.

(B) Is shown upon a plat approved pursuant to law and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings,

lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(2) "County highways" including any county highway as defined in Section 25 of the Streets and Highways Code, that includes the land between the highway lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(3) "Drainage and flood control" including ditches, canals, levees, pumps, dams, conduits, pipes, storm sewers, and dikes necessary to keep or direct water away from people, equipment, buildings, and other protected areas as may be established by lawful authority, as well as the acquisition, improvement, maintenance, and management of floodplain areas and all equipment used in the maintenance and operation of the foregoing.

(4) "Educational facilities" including libraries, child care facilities, including, but not limited to, day care facilities, and employment training facilities.

(5) "Environmental mitigation measures" including required construction or modification of public infrastructure and purchase and installation of pollution control and noise abatement equipment.

(6) "Parks and recreational facilities" including local parks, recreational property and equipment, parkways and property.

(7) "Port facilities" including docks, harbors, ports of entry, piers, ships, small boat harbors and marinas, and any other facilities, additions, or improvements in connection therewith.

(8) "Power and communications" including facilities for the transmission or distribution of electrical energy, natural gas, and telephone and telecommunications service.

(9) "Public transit" including air and rail transport of goods, airports, guideways, vehicles, rights-of-way, passenger stations, maintenance and storage yards, and related structures, including public parking facilities, equipment used to provide or enhance transportation by bus, rail, ferry, or other conveyance, either publicly or privately owned, that provides to the public general or special service on a regular and continuing basis.

(10) "Sewage collection and treatment" including pipes, pumps, and conduits that collect wastewater from residential, manufacturing, and commercial establishments, the equipment, structures, and facilities used in treating wastewater to reduce or eliminate impurities or contaminants, and the facilities used in disposing of, or transporting, remaining sludge, as well as all equipment used in the maintenance and operation of the foregoing.

(11) "Solid waste collection and disposal" including vehicles, vehicle-compatible waste receptacles, transfer stations, recycling

centers, sanitary landfills, and waste conversion facilities necessary to remove solid waste, except that which is hazardous as defined by law, from its point of origin.

(12) "Water treatment and distribution" including facilities in which water is purified and otherwise treated to meet residential, manufacturing, or commercial purposes and the conduits, pipes, and pumps that transport it to places of use.

(13) "Defense conversion" including, but not limited to, facilities necessary for successfully converting military bases consistent with an adopted base reuse plan.

(14) "Public safety facilities" including, but not limited to, police stations, fire stations, court buildings, jails, juvenile halls, and juvenile detention facilities.

(15) "State highways" including any state highway as described in Chapter 2 (commencing with Section 230) of Division 1 of the Streets and Highways Code, and the related components necessary for safe operation of the highway.

(16) Facilities that are part of a transit village development district for which a transit village plan has been adopted pursuant to Section 65460.2, including, but not limited to, commercial developments, recreational, civic, and service uses oriented to the transit station, pedestrian and bicycle access to the transit station, traffic calming and other traffic safety and management measures, and improvements to encourage and facilitate intermodal service at the transit station.

(r) "Rate reduction bonds" has the meaning set forth in Section 840 of the Public Utilities Code.

(s) "Revenues" means all receipts, purchase payments, loan repayments, lease payments, and all other income or receipts derived by the bank or a sponsor from the sale, lease, or other financing arrangement undertaken by the bank, a sponsor or a participating party, including, but not limited to, all receipts from a bond purchase agreement, and any income or revenue derived from the investment of any money in any fund or account of the bank or a sponsor and any receipts derived from transition property. Revenues shall not include moneys in the General Fund of the state.

(t) "Special purpose trust" means a trust, partnership, limited partnership, association, corporation, nonprofit corporation, or other entity authorized under the laws of the state to serve as an instrumentality of the state to accomplish public purposes and authorized by the bank to acquire, by purchase or otherwise, for retention or sale, the bonds of a sponsor or of the bank made or entered into pursuant to this division and to issue special purpose trust bonds or other obligations secured by these bonds or other sources of public or private revenues. Special purpose trust also means any entity authorized by the bank to acquire transition property or to issue rate reduction bonds, or both, subject to the approvals by the bank and powers of the bank as are provided by the

bank in its resolution authorizing the entity to issue rate reduction bonds.

(u) "Sponsor" means any subdivision of the state or local government including departments, agencies, commissions, cities, counties, nonprofit corporations formed on behalf of a sponsor, special districts, assessment districts, and joint powers authorities within the state or any combination of these subdivisions that has, or proposes to acquire, an interest in a project and that makes application to the bank for financial assistance in connection with a project in a manner prescribed by the bank. In addition, an electrical corporation shall be deemed to be the sponsor as well as the participating party for any project relating to the financing of transition costs and the acquisition of transition property on the request of the electrical corporation and any person, company, corporation, partnership, firm, or other entity or group engaged in business or operation within the state that applies for financing of any economic development facility, shall be deemed to be the sponsor as well as the participating party for the project relating to the financing of that economic development facility.

(v) "State" means the State of California.

(w) "Transition costs" has the meaning set forth in Section 840 of the Public Utilities Code.

(x) "Transition property" has the meaning set forth in Section 840 of the Public Utilities Code.

SEC. 3. Section 2 of this bill incorporates amendments to Section 63010 of the Government Code proposed by both this bill and AB 779. 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 63010 of the Government Code, and (3) this bill is enacted after AB 779, in which case Section 1 of this bill shall not become operative.

CHAPTER 937

An act to amend Sections 25503.6 and 25503.8 of the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 25503.6 of the Business and Professions Code is amended to read:

25503.6. (a) Notwithstanding any other provision of this chapter, the holder of a beer manufacturer's or winegrower's license may

purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of any of the following:

(A) An outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located within a county of the eighth class, as defined in Section 28029 of the Government Code.

(B) A fully enclosed arena with a fixed seating capacity in excess of 18,000 seats located in Orange County.

(C) An outdoor stadium or fully enclosed arena with a fixed seating capacity in excess of 8,500 seats located in Kern County.

(D) An exposition park of not less than 50 acres that includes an outdoor stadium with a fixed seating capacity in excess of 8,000 seats and a fully enclosed arena with an attendance capacity in excess of 4,500 people, located within a county of the fourth class, as defined in Section 28025 of the Government Code.

(2) The outdoor stadium or fully enclosed arena described in paragraph (1) is not owned by a community college district.

(3) The advertising space or time is purchased only in connection with the events to be held on the premises of the stadium or arena owned by the on-sale licensee.

(4) The on-sale licensee serves other brands of beer or wine in addition to the brand manufactured by the beer manufacturer or produced by the winegrower purchasing the advertising space or time.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the holder of the beer manufacturer's or winegrower's license and the on-sale licensee.

(c) Any holder of a beer manufacturer's or winegrower's license who, through coercion or other illegal means, induces a holder of a beer or wine wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who solicits or coerces a holder of a beer or wine wholesaler's license to solicit a holder of a beer manufacturer's or winegrower's license to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, plus ten thousand dollars ($10,000), or

by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

SEC. 2. Section 25503.8 of the Business and Professions Code is amended to read:

25503.8. (a) Notwithstanding any other provision of this chapter, the holder of a beer manufacturer's or winegrower's license may purchase advertising space and time from, or on behalf of, an on-sale retail licensee if all of the following conditions are met:

(1) The on-sale licensee is the owner of any of the following:

(A) A fully enclosed auditorium or theater with a fixed seating capacity in excess of 6,000 seats, at least 60 percent of the use of which is for plays or musical concerts, not including sporting events.

(B) A motion picture studio facility at which public tours are conducted for at least four million people per year.

(C) A retail, entertainment development adjacent to, and under common ownership with, a theme park, amphitheater, and motion picture production studio.

(D) A theme or amusement park and the adjacent retail, dining, and entertainment area located in Orange County.

(2) The advertising space or time is purchased only in connection with one of the following:

(A) In the case of a fully enclosed auditorium or theater, in connection with sponsorship of plays or musical concerts to be held on the premises of the auditorium or theater owned by the on-sale licensee.

(B) In the case of a motion picture studio facility, in connection with sponsorship of the public tours or special events conducted at the studio facility.

(C) In the case of a retail, entertainment development, in connection with sponsorship of public tours or special events conducted at the development.

(D) In the case of a theme or amusement park and the adjacent retail, dining, and entertainment area, located in Orange County, in connection with daily activities and events at the theme or amusement park and the adjacent retail, dining, and entertainment area.

(3) The on-sale licensee serves other brands of beer or wine in addition to the brand manufactured by the beer manufacturer or produced by the winegrower purchasing the advertising space or time.

(b) Any purchase of advertising space or time conducted pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the holder of the beer manufacturer's or winegrower's license and the on-sale licensee, which contract shall not in any way involve the holder of a beer or wine wholesaler's license.

(c) Any holder of a beer manufacturer's license or winegrower's license who, through coercion or other means, induces a holder of a

beer or wine wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who solicits or coerces a holder of a beer or wine wholesaler's license to solicit a holder of a beer manufacturer's or winegrower's license to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

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 that the loss of advertising revenue by the City of Bakersfield and the County of Orange may be alleviated at the earliest opportunity and to avoid any impropriety associated with summer and fall beer or wine sales and distribution at the designated facility from allowing beer manufacturers or winegrowers to compensate the facility operator for advertising, it is necessary that this act go into immediate effect.

CHAPTER 938

An act to amend Sections 1011 1707, and 1728 of, to add Sections 1014, 1015, 1016, and 1017 to, and to repeal and add Sections 1726, 1727, and 1732 of, the Water Code, relating to water.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 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 Water Rights Protection and Expedited Short-Term Water Transfer Act of 1999."

SEC. 2. Section 1011 of the Water Code is amended to read:

1011. (a) When any person entitled to the use of water under an appropriative right fails to use all or any part of the water because of water conservation efforts, any cessation or reduction in the use of the appropriated water shall be deemed equivalent to a reasonable beneficial use of water to the extent of the cessation or reduction in use. No forfeiture of the appropriative right to the water conserved shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914.

The board may require that any user of water who seeks the benefit of this section file periodic reports describing the extent and amount of the reduction in water use due to water conservation efforts. To the maximum extent possible, the reports shall be made a part of other reports required by the board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.

For purposes of this section, the term "water conservation" shall mean the use of less water to accomplish the same purpose or purposes of use allowed under the existing appropriative right. Where water appropriated for irrigation purposes is not used as a result of temporary land fallowing or crop rotation, the reduced usage shall be deemed water conservation for purposes of this section. For the purpose of this section, "land fallowing" and "crop rotation" mean those respective land practices, involving the nonuse of water, used in the course of normal and customary agricultural production to maintain or promote the productivity of agricultural land.

(b) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of water conservation efforts as described in subdivision (a), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(c) Notwithstanding any other provision of law, upon the completion of the term of a water transfer agreement, or the right to the use of that water, that is available as a result of water conservation efforts described in subdivision (a), the right to the use of the water shall revert to the transferor as if the water transfer had not been undertaken.

SEC. 3. Section 1014 is added to the Water Code, to read:

1014. The transfer of water, or the offer of water for transfer, shall not cause, or be the basis for, a forfeiture, abandonment, or modification of any water right, contract right, or other right to the use of that water. An offer of water for transfer, contract negotiations, or a transfer agreement shall not be used as evidence of waste or unreasonable use, or of cessation of use, of the water made available for transfer.

SEC. 4. Section 1015 is added to the Water Code, to read:

1015. During the term of a temporary change, as defined in Section 1728, if an enforcement action or other proceeding is commenced that alleges that the use of water violates Section 2 of Article X of the California Constitution, Sections 100, 101, 1410, and 1675, or any other legislative, administrative, or judicial limitation on the water that is subject to that water transfer and the water involved is, at the time of the alleged violation, subject to a water transfer, the determination of the alleged violation shall be based on an assessment of the transferee's use of transferred water. If a transferee's right to use transferred water is divested, in whole or in part, on the basis of the transferee's abandonment, forfeiture, waste, or unreasonable use of the transferred water, the divested portion of the right shall revert immediately to the transferor.

SEC. 5. Section 1016 is added to the Water Code, to read:

1016. (a) At the conclusion of the term of a water transfer agreement, all rights in, and the use of, the water subject to the agreement revert back to the transferor.

(b) After the conclusion of the term of a water transfer agreement, the transferee or any beneficiary of the transfer shall not do either of the following:

(1) Bring any claim for a continuation of the water supply made available by the agreement.

(2) Claim any right to a continued supply of water as a result of the transfer, based on reliance, estoppel, intervening public use, prescription, water shortage emergency, or unforeseen or unforeseeable increases in demand, or any other cause.

SEC. 6. Section 1017 is added to the Water Code, to read:

1017. The beneficial use of water pursuant to a transfer or exchange authorized pursuant to Chapter 6.6 (commencing with Section 1435) of, Chapter 10 (commencing with Section 1700) of, Chapter 10.5 (commencing with Section 1725) of, Part 2, or any other provision of law, shall constitute a beneficial use of water by the holder of the permit, license, water right, or other entitlement for use that is the basis for the transfer or exchange, and shall not affect any determination or forfeiture applicable to water appropriated pursuant to the Water Commission Act or this code or water appropriated prior to December 19, 1914.

SEC. 7. Section 1707 of the Water Code is amended to read:

1707. (a) (1) Any person entitled to the use of water, whether based upon an appropriative, riparian, or other right, may petition

the board pursuant to this chapter, Chapter 6.6 (commencing with Section 1435) or Chapter 10.5 (commencing with Section 1725) for a change for purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation in, or on, the water.

(2) The petition may be submitted for any of the purposes described in paragraph (1) and may, but is not required to, be submitted in combination with a petition to make any other change authorized pursuant to this part. The petition shall specify the time, location, and scope of the requested change, and other relevant information relating thereto.

(b) The board may approve the petition filed pursuant to subdivision (a), subject to any terms and conditions which, in the board's judgment, will best develop, conserve, and utilize, in the public interest, the water proposed to be used as part of the change, whether or not the proposed use involves a diversion of water, if the board determines that the proposed change meets all of the following requirements:

(1) Will not increase the amount of water the person is entitled to use.

(2) Will not unreasonably affect any legal user of water.

(3) Otherwise meets the requirements of this division.

(c) (1) Upon the request of the petitioner, the board may specify, as part of its approval of the petition, that the water that is subject to the approval pursuant to this section shall be in addition to water that is required, if any, to be used for instream purposes to satisfy any applicable federal, state, or local regulatory requirements governing water quantity, water quality, instream flows, fish and wildlife, wetlands, recreation, and other instream beneficial uses. If the request is approved by the board, state and local agencies, as well as the courts, shall not credit the water subject to that petition towards compliance with any of the regulatory requirements described in this subdivision. A federal agency shall comply with the requirement imposed by this paragraph to the extent required by federal law, or to the extent that it chooses to comply.

(2) For the purposes of this subdivision, "requirements" includes requirements or obligations that have not been formally established or allocated at the time of the petition, and obligations under any agreement entered into to meet those requirements. Neither any petition filed pursuant to this section nor any documents or statements made in connection therewith shall be construed or used as an admission, evidence, or indication of any obligation to meet any of the requirements described in this subdivision.

(d) Except as provided in subdivision (c), water that is subject to a petition granted pursuant to this section shall be used to meet, in whole or in part, any requirement described in subdivision (c) if any of these requirements exist. The water shall be credited to the petitioner, or to any other person or entity designated by the petitioner, whenever that person or entity has, or may have,

obligations to meet one or more of the requirements described in subdivision (c). The water shall be credited towards compliance with any requirements described in subdivision (c), by state and local agencies, as well as the courts. A federal agency shall comply with the requirement imposed by this subdivision to the extent required by federal law, or to the extent that it chooses to comply.

SEC. 8. Section 1726 of the Water Code is repealed.

SEC. 9. Section 1726 is added to the Water Code, to read:

1726. (a) (1) A permittee or licensee who proposes a temporary change shall submit to the board a petition to change the terms of the permit or license as required to accomplish the proposed temporary change. Any petition for a temporary change shall be filed by the permittee or licensee. If the proposed temporary change is for the benefit of a contractor or user supplied directly or indirectly by the permittee or licensee, the permittee or licensee may authorize the contractor or user to participate as a copetitioner. The permittee or licensee shall identify any copetitioner in the petition.

(2) A contractor or user described in paragraph (1), whether or not designated as a copetitioner, and the person to whom the water is proposed to be transferred, shall be named as parties to the proceeding, with the same rights to receive notices, respond to board determinations, and petition for writ of mandate as the petitioner.

(b) A petition shall include both of the following:

(1) Reference to the permit or license that serves as the basis for the water transfer.

(2) A written description of the changes in water storage, timing, and point of diversion, place and purpose of use, timing and point of return flow, and water quality of instream flows that are likely to occur as a result of the proposed temporary change.

(c) A petitioner shall provide a copy of the petition to the Department of Fish and Game, the board of supervisors of the county or counties in which the petitioner currently stores or uses the water subject to the petition, and the board of supervisors of the county or counties to which the water is proposed to be transferred.

(d) Within 10 days of the date of submission of a petition to the board, the petitioner shall publish in not less than one newspaper of general circulation, in the county or counties in which the petitioner currently stores or uses the water subject to the petition, a notice of the petition and a brief description of the terms of the proposed temporary change. The board shall, in a timely manner, provide to the petitioner a list of water right holders of record on file with the board who may be affected by the transfer, and the petitioner shall provide written notice to those water right holders not later than 10 days after the date on which the petition is submitted. The board shall post the notice of petition on its Internet web site not later than 10 days after the date on which the petition is submitted. The notice of the petition shall specify the date on which comments are due. The

board may impose on the petitioner any other notice requirement it determines to be necessary.

(e) Within 10 days of the date of receipt of a petition, the board shall commence an investigation of the proposed temporary change. Pursuant to that investigation, the board shall determine if the water proposed to be transferred would have been consumptively used or stored pursuant to the petitioner's permit or license in the absence of the proposed transfer or conserved pursuant to Section 1011. The board also shall evaluate the changes in water storage, timing and point of diversion, place and purpose of use, timing and point of return flow, water quality, and instream flows, and other changes that are likely to occur as a result of the proposed temporary change.

(f) Water users that may be affected by a proposed temporary change and any other interested party may file a written comment regarding a petition with the board. Comments shall be filed not later than 30 days after the date that the notice was published pursuant to subdivision (d). The board shall evaluate and take into consideration all comments that are filed in a timely manner.

(g) (1) Except as specified in paragraphs (2) and (3), the board shall render a decision on the petition not later than 35 days after the date that investigation commenced or the date that the notice was published, whichever is later. The board's decision shall be in accordance with the substantive standards set forth in Section 1727. The board shall explain its decision in writing and shall send copies of the decision to the petitioner, the Department of Fish and Game, the board of supervisors of the county or counties described in subdivision (c), the proposed transferee, and any party who has filed a written comment in accordance with subdivision (f).

(2) If comments are filed in accordance with subdivision (f), or for any other good cause, the board may extend the date of its decision for up to 20 days.

(3) If the board or the petitioner determines that an additional extension of time for a decision is necessary for the board to make the findings required by Section 1727, or that a hearing is necessary for the board to make those findings, the board may extend the time for a decision with the consent of the petitioner. If the petitioner agrees to a hearing, the board shall identify the issues for which additional evidence is required and shall fix a time and place for the hearing. The board shall provide notice of the time, place, and subject matter of the hearing to the petitioner, the Department of Fish and Game, the board of supervisors of the county or counties described in subdivision (c), the water right holders of record identified pursuant to subdivision (d), the proposed transferee, and any party who has filed a written comment in accordance with subdivision (f).

SEC. 10. Section 1727 of the Water Code is repealed.

SEC. 11. Section 1727 is added to the Water Code, to read:

1727. (a) The board shall review a petition for a temporary change of water rights in accordance with this section.

(b) The board shall approve a temporary change if it determines that a preponderance of the evidence shows both of the following:

(1) The proposed temporary change would not injure any legal user of the water, during any potential hydrologic condition that the board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows.

(2) The proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(c) The petitioner shall have the burden of establishing that a proposed temporary change would comply with paragraphs (1) and (2) of subdivision (b). If the board determines that that petitioner has established a prima facie case, the burden of proof shall shift to any party that has filed a comment pursuant to subdivision (f) of Section 1726 to prove that the proposed temporary change would not comply with paragraphs (1) and (2) of subdivision (b). The board may make a determination required by this subdivision without a hearing.

(d) In reviewing a petition for a temporary change, the board shall not modify any term or condition of the petitioner's permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change in accordance with this article.

(e) In applying the standards set forth in paragraphs (1) and (2) of subdivision (b), the board shall not deny, or place conditions on, a temporary change to avoid or mitigate impacts that are not caused by the temporary change. Neither the Department of Fish and Game, nor any other state agency that comments on the proposed temporary change, shall propose conditions to mitigate effects on fish, wildlife, or other instream beneficial uses caused by factors other than the proposed temporary change. This subdivision does not limit the board, the Department of Fish and Game, or any other state agency, in proceedings pursuant to any provision of law other than this article.

SEC. 11.5. Section 1728 of the Water Code is amended to read:

1728. For the purposes of this article, a temporary change means any change of point of diversion, place of use, or purpose of use involving a transfer or exchange of water or water rights for a period of one year or less. The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out. If, within a period of one year or less, the water involved in the temporary change is moved to off-stream storage outside of the watershed where the water originated, the change shall be considered a temporary change, and the water moved to off-stream storage outside the watershed where the water originated may be put to beneficial use in the place of use and for the

purposes of use specified in the board's order approving the temporary change either during or after that period.

SEC. 12. Section 1732 of the Water Code is repealed.

SEC. 13. Section 1732 is added to the Water Code, to read:

1732. The petitioner shall not initiate or increase the use of groundwater to replace surface water transferred pursuant to this article, except in compliance with Sections 1745.10 and 1745.11.

CHAPTER 939

An act to amend Sections 22000, 22007, 22008, 22119.2, 22128, 22134, 22135, 22136, 22138.5, 22147.5, 22148, 22161, 22163, 22306, 22327, 22360, 22400, 22455.5, 22457, 22458, 22459, 22502, 22503, 22504, 22508, 22508.5, 22514, 22516, 22601.5, 22602, 22604, 22664, 22713, 22714, 22717, 22718, 22801, 22803, 22805, 22820, 22823, 22826, 22955, 23003, 23004, 23006, 23201, 23702, 23851, 24101.5, 24201, 24203.5, 24211, 24212, 24213, 24300, 24305.5, 24306, 24307, 24600, 24615, 26135, 26202, 26215, 26301, 26303, 26401.5, 26504, 26603, 26604, 27410, 44494, and 47611 of, to add Sections 22104.5, 22106.1, 22106.2, 22109.5, 22115.2, 22115.5, 22156.1, 22156.2, 22156.5, 22170.5, 22360.5, 22724, and 23805.5 to, to repeal and add Section 24205 of, the Education Code, and to amend Section 20639 of the Government Code, relating to the State Teachers' Retirement System.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 22000 of the Education Code is amended to read:

22000. This part may be known and cited as the E. Richard Barnes Act and together with Part 14 (commencing with Section 26000) shall be known as the Teachers' Retirement Law.

SEC. 2. Section 22007 of the Education Code is amended to read:

22007. The obligations of any member, or the member's beneficiaries, to this system and the Defined Benefit Program continue throughout membership, and thereafter until all of the obligations of this system and the Defined Benefit Program to or in respect to the member or the member's beneficiaries have been discharged.

SEC. 3. Section 22008 of the Education Code is amended to read:

22008. For the purposes of payments into or out of the retirement fund for adjustments of errors or omissions with respect to the Defined Benefit Program, the period of limitation of actions shall be applied, except as provided in Sections 23302 and 24613, as follows:

(a) No action may be commenced by or against the board, the system, or the plan more than three years after all obligations to or on behalf of the member, former member, or beneficiary have been discharged.

(b) If the system makes an error that results in incorrect payment to a member, former member, or beneficiary, the system's right to commence recovery shall expire three years from the date the incorrect payment was made.

(c) If an incorrect payment is made due to lack of information or inaccurate information regarding the eligibility of a member, former member, or beneficiary to receive benefits under the plan, the period of limitation shall commence with the discovery of the incorrect payment.

(d) Notwithstanding any other provision of this section, if an incorrect payment has been made on the basis of fraud or intentional misrepresentation by a member, beneficiary, or other party in relation to or on behalf of a member or beneficiary, the three-year period of limitation shall not be deemed to commence or to have commenced until the system discovers the incorrect payment.

(e) The collection of overpayments under subdivisions (b), (c), and (d) shall be made pursuant to Section 24617.

SEC. 4. Section 22104.5 is added to the Education Code, to read:

22104.5. "Actuary" means a person professionally trained in the technical and mathematical aspects of insurance, pensions, and related fields who has been appointed by the board for the purpose of actuarial services required under this part.

SEC. 5. Section 22106.1 is added to the Education Code, to read:

22106.1. "Base days" means the number of days of creditable service required to earn one year of service credit.

SEC. 6. Section 22106.2 is added to the Education Code, to read:

22106.2. "Base hours" means the number of hours of creditable service required to earn one year of service credit.

SEC. 7. Section 22109.5 is added to the Education Code, to read:

22109.5. "Break in service," for purposes of determining a member's final compensation, means:

(a) With respect to service of a member employed as a full-time employee and service performed by a member employed as a part-time employee, any period of time covering a pay period during which a member is on an unpaid leave or absence or a pay period in which a member has not performed any creditable service.

(b) For a member who has been employed in a substitute position:

(1) And has a change in assignment during a school year to a full-time or part-time position, a break in service is determined on the same basis as for the full-time or part-time employment during the same school year.

(2) For less than 50 percent of their teaching career for which service is credited, a break in service is determined on the same basis as full-time employment.

(3) For more than 50 percent of their teaching career for which service is credited, a break in service is any period of time within a school year for which compensation is not paid and service is not credited.

(c) If a member commenced performing service at the beginning of a school term, July and August of the school year are not a break in service; however, if the member commenced performing service after the school term begins, the previous July and August are a break in service.

(d) Earnable salaries for a full pay period, but not beyond the effective date of retirement, shall be used in determining final compensation when the member performed service within that pay period.

SEC. 8. Section 22115.2 is added to the Education Code, to read:

22115.2. "Concurrent membership" means membership in the Defined Benefit Program by an individual who is credited with service that is not used as a basis for benefits under any other public retirement system and is also a member of the California Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, county retirement systems established under Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code, or the San Francisco City and County Employees' Retirement System. A member with concurrent membership shall have the right to the following:

(a) Have final compensation determined pursuant to subdivision (c) of Section 22134.

(b) Redeposit accumulated retirement contributions pursuant to Section 23201.

(c) Apply for retirement pursuant to paragraph (2) of subdivision (a) of Section 24201.

SEC. 9. Section 22115.5 is added to the Education Code, to read:

22115.5. (a) "Concurrent retirement" entitles a member of the Defined Benefit Program to retire for service from the State Teachers' Retirement System and from at least one of the retirement systems with which the member has concurrent membership, as defined in Section 22115.2, on the same date or on different dates provided that the member does not perform creditable service subject to coverage under the other system or the Defined Benefit Program between the two retirement dates.

(b) A retired member who is subsequently employed in a position subject to membership in a public retirement system, specified in Section 22115.2, shall not be eligible for concurrent retirement.

SEC. 10. Section 22119.2 of the Education Code is amended to read:

22119.2. (a) "Creditable compensation" means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).

(4) Member contributions picked up by an employer pursuant to Section 22903 or 22904.

(5) Amounts deducted by an employer from the member's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Money paid in accordance with a salary schedule by an employer to an employee for achieving certification from a national board awarding certifications, in which eligibility for this certification is based, in part, on years of training or years of experience in teaching service, if the compensation is paid by the employer to all employees who achieved this certification.

(8) Any other payments the board determines to be "creditable compensation."

(b) "Creditable compensation" does not mean and shall not include:

(1) Money paid for service performed in excess of the full-time equivalent for the position.

(2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of the Defined Benefit Program in excess of one year of service credit for any one school year.

(3) Money paid for service that is not creditable service pursuant to Section 22119.5.

(4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) of subdivision (a) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed, except as provided in paragraph (7) of subdivision (a).

(5) Fringe benefits provided by an employer.

(6) Job-related expenses paid or reimbursed by an employer.

(7) Money paid for unused accumulated leave.

(8) Severance pay or compensatory damages or money paid to a member in excess of salary as a compromise settlement.

(9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for the member and are not deducted from the member's salary.

(10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the Defined Benefit Program. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the Defined Benefit Program and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

(11) Any other payments the board determines not to be "creditable compensation."

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of "creditable compensation" in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases in, compensation for the principal purpose of enhancing benefits.

(e) This section shall be deemed to have become operative on July 1, 1996.

SEC. 11. Section 22128 of the Education Code is amended to read:

22128. "Early retirement" and "early retirement age" mean the age of 55 years, which is the age upon attainment of which the member becomes eligible for a service retirement allowance with reduction because of age and without special qualifications.

SEC. 12. Section 22134 of the Education Code is amended to read:

22134. (a) "Final compensation" means the highest average annual compensation earnable by a member during any period of

three consecutive school years while an active member of the Defined Benefit Program or time during which he or she was not a member but for which the member has received credit under the Defined Benefit Program, except time that was so credited for service performed outside this state prior to July 1, 1944. The last three consecutive years of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who has concurrent membership in another retirement system pursuant to Section 22115.2 shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or a county superintendent of schools.

(2) Service under the other system was not performed concurrently with service under the Defined Benefit Program.

(3) Retirement under the Defined Benefit Program is concurrent with the member's retirement under the other system.

(d) The compensation earnable for the first position in which California service was credited shall be used when additional compensation earnable is required to accumulate three consecutive years for the purpose of determining final compensation under Section 23805.

(e) If a member has received service credit for part-time service performed prior to July 1, 1956, the member's final compensation shall be adjusted for that service in excess of one year by the ratio that part-time service bears to full-time service.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The compensation earnable for periods of part-time service shall be adjusted by the ratio that part-time service bears to full-time service.

(g) The amendment of former Section 22127 made by Chapter 782 of the Statutes of 1982 does not constitute a change in, but is declaratory of, the existing law.

SEC. 13. Section 22135 of the Education Code is amended to read:

22135. (a) Notwithstanding subdivisions (a) and (b) of Section 22134, "final compensation" means the highest annual compensation earnable by an active member who is a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, during any period of 12 consecutive months during his or her membership in the plan's Defined Benefit Program. The last 12 consecutive months of

employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) Section 22134, except subdivision (a) of that section, shall apply to classroom teachers who retire after June 30, 1990, and any statutory reference to Section 22134 or "final compensation" with respect to a classroom teacher who retires, becomes disabled, or dies, after June 30, 1990, shall be deemed to be a reference to this section.

(c) As used in this section, "classroom teacher" means any of the following:

(1) All teachers and substitute teachers in positions requiring certification qualifications who spend, during the last 10 years of their employment with the same employer which immediately precedes their retirement, 60 percent or more of their contract time each year providing direct instruction. For the purpose of determining continuity of employment within the meaning of this subdivision, an authorized leave of absence for sabbatical or illness or other collectively bargained or employer-approved leaves shall not constitute a break in service.

(2) Other certificated personnel who spend, during the last 10 years of their employment with the same employer that immediately precedes their retirement, 60 percent or more of their contract time each year providing direct services to pupils, including, but not limited to, librarians, counselors, nurses, speech therapists, resource specialists, audiologists, audiometrists, hygienists, optometrists, psychologists, driver safety instructors, and personnel on special assignment to perform school attendance and adjustment services.

(d) As used in this section, "classroom teacher" does not include any of the following:

(1) Certificated employees whose job descriptions require an administrative credential.

(2) Certificated employees whose job descriptions include responsibility for supervision of certificated staff.

(3) Certificated employees who serve as advisers, coordinators, consultants, or developers or planners of curricula, instructional materials, or programs, who spend, during the last 10 years of their employment with the same employer that immediately precedes their retirement, less than 60 percent of their contract time in direct instruction.

(4) Certificated employees whose job descriptions require provision of direct instruction or services, but who are functioning in nonteaching assignments.

(5) Classified employees.

(e) This section shall apply only to teachers employed by an employer that has, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, entered into a written agreement with an exclusive representative,

that makes this section applicable to all of its classroom teachers, as defined in subdivision (c).

(f) The written agreement shall include a mechanism to pay for all increases in allowances provided for by this section through employer contributions or employee contributions or both, which shall be collected and retained by the employer in a trust fund to be used solely and exclusively to pay the system for all increases in allowances provided by this section and related administrative costs; and a mechanism for disposition of the employee's contributions if employment is terminated before retirement, and for the establishment of a trust fund board. The trust fund board shall administer the trust fund and shall be composed of an equal number of members representing classroom teachers chosen by the bargaining agent and the employer. If the employer agrees to pay the total cost of increases in allowances, the establishment of a trust fund and a trust fund board shall be optional to the employer. The employer, within 30 days of receiving an invoice from the system, shall reimburse the retirement fund the amount determined by the Teachers' Retirement Board to be the actuarial equivalent of the difference between the allowance the member or beneficiary receives pursuant to this section and the allowance the member or beneficiary would have received if the member's final compensation had been computed under Section 22134 and the proportionate share of the cost to the plan's Defined Benefit Program, as determined by the Teachers' Retirement Board, of administering this section. The payment shall include the cost of all increases in allowances provided for by this section for all years of service credited to the member as of the benefit effective date. Interest shall be charged at the regular interest rate for any payment not received within 30 days of receipt of the invoice. Payments not received within 30 days after receipt of the invoice may be collected pursuant to Section 23007.

(g) Upon the execution of the agreement, the employer shall notify all certificated employees of the agreement and any certificated employee of the employer, who is a member of the Public Employees' Retirement System pursuant to Section 22508, that he or she may, within 60 days following the date of notification, elect to terminate his or her membership in the Public Employees' Retirement System and become a member of this plan's Defined Benefit Program. However, only service credited under the Defined Benefit Program subsequent to the date of that election shall be subject to this section.

(h) An employer that agrees to become subject to this section, shall, on a form and within the timeframes prescribed by the system, certify the applicability of this section to a member pursuant to the criteria set forth in this section when a retirement, disability, or family allowance becomes payable.

(i) For a nonmember spouse, final compensation shall be determined pursuant to paragraph (2) of subdivision (c) of Section

22664. The employer, within 30 days of receiving an invoice from the system, shall reimburse the retirement fund pursuant to subdivision (f). Interest shall be charged at the regular interest rate for payments not received within the prescribed timeframe. Payments not received within 30 days of invoicing may be collected pursuant to Section 23007.

SEC. 14. Section 22136 of the Education Code is amended to read:

22136. (a) "Final compensation" with respect to a member whose salary while an active member was reduced because of a reduction in school funds means the highest average annual compensation earnable by the member during any three years while employed to perform creditable service subject to coverage by the Defined Benefit Program if the member elects to be subject to this section.

(b) For the purposes of this section, a year shall be considered to be a period of 12 consecutive months.

SEC. 15. Section 22138.5 of the Education Code is amended to read:

22138.5. (a) "Full time" means the days or hours of creditable service the employer requires to be performed by a class of employees in a school year in order to earn the compensation earnable as defined in Section 22115 and specified under the terms of a collective bargaining agreement or employment agreement. For the purpose of crediting service under this part, "full time" shall not be less than the minimum standards specified in this section.

(b) The minimum standard for full time in kindergarten through grade 12 shall be:

(1) One hundred seventy-five days per year or 1,050 hours per year, except as provided in paragraphs (2) and (3).

(2) (A) One hundred ninety days per year or 1,520 hours per year for all principals and program managers, including advisers, coordinators, consultants, and developers or planners of curricula, instructional materials, or programs, and for administrators, except as provided in subparagraph (B).

(B) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the employer's governing board for administrators at a county office of education.

(3) One thousand fifty hours per year for teachers in adult education programs.

(c) The minimum standard for full time in community colleges shall be:

(1) One hundred seventy-five days per year or 1,050 hours per year, except as provided in paragraphs (2), (3), (4), (5), and (6). Full time shall include time for duties the employer requires to be performed as part of the full-time assignment for a particular class of employees.

(2) One hundred ninety days per year or 1,520 hours per year for all program managers and for administrators, except as provided in paragraph (3).

(3) Two hundred fifteen days per year or 1,720 hours per year including school and legal holidays pursuant to the policy adopted by the employer's governing board for administrators at a district office.

(4) One hundred seventy-five days per year or 1,050 hours per year for all counselors and librarians.

(5) Five hundred twenty-five instructional hours per year for all instructors employed on a part-time basis. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(6) Eight hundred seventy-five instructional hours per year for all adult education instructors. If an instructor receives compensation for office hours pursuant to Article 10 (commencing with Section 87880) of Chapter 3 of Part 51, then the minimum standard established herein shall be increased appropriately by the number of office hours required annually for the class of employees.

(d) The board shall have final authority to determine full time for purposes of crediting service under this part if full time is not otherwise specified herein.

SEC. 16. Section 22147.5 of the Education Code is amended to read:

22147.5. "Nonqualified service" means time during which creditable service subject to coverage by the Defined Benefit Program is not performed, excluding time a member is eligible to purchase as permissive or additional service credit pursuant to Chapter 14 (commencing with Section 22800), Chapter 14.2 (commencing with Section 22820), and Chapter 14.5 (commencing with Section 22850).

SEC. 17. Section 22148 of the Education Code is amended to read:

22148. "Normal retirement" and "normal retirement age" mean the age of 60 years, which is the age upon attainment of which the member becomes eligible for a service retirement allowance without reduction because of age and without special qualifications.

SEC. 18. Section 22156.1 is added to the Education Code, to read:

22156.1. "Present value," for purposes of Section 22723, means the amount of money needed on the effective date of retirement to reimburse the system for the actuarially determined cost of the portion of a member's retirement allowance attributable to unused excess sick leave days. The present value on the effective date of retirement shall equal the number of unused excess sick leave days divided by the number of base days, multiplied by the prior year's compensation earnable multiplied by the present value factor.

SEC. 19. Section 22156.2 is added to the Education Code, to read:

22156.2. "Present value factor," for purposes of Section 22156.1, means an overall average rate based upon the demographics of members who recently retired under the Defined Benefit Program and regular interest that shall determine present value on the effective date of retirement.

SEC. 20. Section 22156.5 is added to the Education Code, to read:

22156.5. "Prior year's compensation earnable" means the compensation earnable for the most recent school year in which the member earned service credit that precedes the last school year in which the member earned service credit.

SEC. 21. Section 22161 of the Education Code is amended to read:

22161. "Public school" means any day or evening elementary school, any day or evening secondary school, community college, technical school, kindergarten school, and prekindergarten school established by the Legislature, or by municipal or district authority.

SEC. 22. Section 22163 of the Education Code is amended to read:

22163. "Reinstatement" means the change in status with respect to the Defined Benefit Program under this part from a disabled or retired member to an active or inactive member and termination of one of the following:

(a) A service retirement allowance pursuant to Section 24208.

(b) A disability retirement allowance pursuant to Section 24117.

(c) A disability allowance pursuant to Section 24004 or 24015.

(d) A service retirement allowance or disability retirement allowance pursuant to Section 23404.

SEC. 23. Section 22170.5 is added to the Education Code, to read:

22170.5. (a) "Sick leave days" means the number of days of accumulated and unused leave of absence for illness or injury.

(b) "Basic sick leave day" means the equivalent of one day's paid leave of absence per pay period due to illness or injury.

(c) "Excess sick leave days" means the day or total number of days, granted by an employer in a pay period as defined in Section 22154 after June 30, 1986, for paid leave of absence due to illness or injury, in excess of a basic sick leave day.

SEC. 24. Section 22306 of the Education Code is amended to read:

22306. (a) Information filed with the system by a member, participant, or beneficiary of the plan is confidential and shall be used by the system for the sole purpose of carrying into effect the provisions of this part. No official or employee of the system who has access to the individual records of a member, participant, or beneficiary shall divulge any confidential information concerning those records to any person except in the following instances:

(1) To the member, participant, or beneficiary to whom the information relates.

(2) To the authorized representative of the member, participant, or beneficiary.

(3) To the governing board of the member's or participant's current or former employer.

(4) To any department, agency, or political subdivision of this state.

(5) To other individuals as necessary to locate a person to whom a benefit may be payable.

(6) Pursuant to subpoena.

(b) Information filed with the system in a beneficiary designation form may be released after the death of the member or participant to those persons who may provide information necessary for the distribution of benefits.

(c) The information is not open to inspection by anyone except the board and its officers and employees of the system, and any person authorized by the Legislature to make inspections.

SEC. 25. Section 22327 of the Education Code is amended to read:

22327. Notwithstanding any other provision of law, the Employment Development Department shall disclose to the board information in its possession relating to the earnings of any person who is receiving a disability benefit under the Defined Benefit Program. The earnings information shall be released to the board only upon written request from the board specifying that the person is receiving disability benefits under the Defined Benefit Program. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing. The board shall notify recipients of disability benefits that earnings information shall be obtained from the Employment Development Department upon request by the board. The board shall not release any earnings information received from the Employment Development Department to any person, agency, or other entity. The system shall reimburse the Employment Development Department for all reasonable administrative expenses incurred pursuant to this section.

SEC. 26. Section 22360 of the Education Code is amended to read:

22360. (a) Notwithstanding any other provision of law, the board may pursuant to Section 22203 and in conformance with its fiduciary duty set forth in Section 22250, enter into correspondent agreements with private lending institutions in this state to utilize the retirement fund to invest in residential mortgages, including assisting borrowers, through financing, to obtain homes in this state.

(b) The program shall, among other things, provide:

(1) That home loans be made available to borrowers for the purchase of single-family dwellings, two-family dwellings, three-family dwellings, four-family dwellings, single-family cooperative apartments, and single-family condominiums.

(2) That the recipients of the loans occupy the homes as their principal residences in accordance with policies established by the board.

(3) That the home loans shall be available only for the purchase or refinance of homes in this state.

(4) That the amount and length of the loans shall be pursuant to a schedule periodically established by the board that shall provide a loan of up to 100 percent of the appraised value. In no event shall the loan amount exceed three hundred fifty thousand dollars ($350,000). The portion of any loan exceeding 80 percent of value shall be insured by an admitted mortgage guaranty insurer conforming to Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2 of the Insurance Code, in an amount so that the unguaranteed portion of the loan does not exceed 75 percent of the market value of the property together with improvements thereon.

(5) That there may be prepayment penalties assessed on the loans in accordance with policies established by the board.

(6) That the criteria and terms for its loans shall be consistent with the financial integrity of the program and the sound investment of the retirement fund.

(7) Any other terms and conditions as the board shall deem appropriate.

(c) It is the intent of the Legislature that the provisions of this section be used to establish an investment program for residential mortgages, including assisting borrowers in purchasing homes in this state, or refinancing a mortgage loan. The Legislature intends that home loans made pursuant to this section shall be secured primarily by the property purchased or refinanced and shall not exceed the appraised value of that property.

(d) Appropriate administrative costs of implementing this section and Section 22360.5 shall be paid by the participating borrowers. Those costs may be included in the loan amount.

(e) Appropriate interest rates shall be periodically reviewed and adjusted to provide loans to borrowers consistent with the financial integrity of the home loan program and the sound and prudent investment of the retirement fund. Under no circumstances, however, shall the interest rates offered to borrowers be below current market rate.

(f) The board shall administer this section and Section 22360.5 under other terms and conditions it deems appropriate and in keeping with the investment standard. The board may adopt policies as necessary for its administration of this section and Section 22360.5 and to assure compliance with applicable state and federal laws.

(g) This section and Section 22360.5 shall be known as, and may be cited as, the Dave Elder State Teachers' Retirement System Home Loan Program Act.

SEC. 27. Section 22360.5 is added to the Education Code, to read:

22360.5. (a) The board may include in any investment program established pursuant to Section 22360 a procedure whereby a member may obtain 100 percent financing for the purchase for a single-family dwelling unit in accordance with the following criteria:

(1) The member shall obtain one loan secured by the purchased home, pursuant to Section 22360, and a second personal loan secured

by a portion of the accumulated retirement contributions in the member's individual account. The personal loan shall only be used for the purchase of the member's principal residence and not for a loan to refinance the member's existing mortgage.

(2) The loan secured by the purchased home shall be consistent with the requirements imposed by Section 22360.

(3) In no event may the personal loan secured by the accumulated retirement contributions in the member's individual account exceed the lesser of 50 percent of the current value amount of the accumulated retirement contributions or fifty thousand dollars ($50,000).

(4) If two members are married, the personal loan secured by the sum total of accumulated retirement contributions in both members' accounts shall not exceed 5 percent of the loan.

(5) The pledge of security under this section shall remain in effect until the personal loan is paid in full.

(b) The pledge of security under this section shall take binding effect. In the event of a default on the personal loan secured by the member's retirement contributions as authorized by this section, the board shall deduct an amount from the member's accumulated retirement contributions on deposit and adjust the member's accumulated retirement contributions as necessary to recover any outstanding loan balance prior to making any disbursement of a refund or a lump-sum distribution.

(c) In the event of a default on the personal loan by a member, the board shall deduct the monthly principal plus appropriate interest from the member's benefit, when the member begins receiving a benefit, until the loan is paid in full.

(d) In the event of a default on the personal loan by a member receiving a benefit, the board shall deduct the monthly principal and interest from the member's benefit until the personal loan is paid in full.

(e) The secured personal loan permitted under this section shall be made available only to members who meet eligibility criteria as determined by the board.

(f) In the event of a refund or lump-sum distribution of the accumulated retirement contributions, the member's account shall be adjusted as necessary to recover any outstanding loan balance.

(g) If the member is married at the time the home is purchased with a personal loan secured by the member's accumulated retirement contributions as authorized by this section, then the member's spouse shall agree in writing to the pledge of security, as to his or her community interest in the amount pledged, regardless of whether title to the home is held in joint tenancy.

(h) For purposes of the section only, "member" means any person who is entitled to receive an allowance funded by the system pursuant to this part or Part 14, notwithstanding any vesting

requirement and without regard to present eligibility to retire, and who is not retired or disabled.

SEC. 28. Section 22400 of the Education Code is amended to read:

22400. (a) There is in the State Treasury a special trust fund to be known as the Teachers' Retirement Fund. There shall be deposited in that fund the assets of the plan and its predecessors, consisting of employee contributions, employer contributions, state contributions, appropriations made to it by the Legislature, income on investments, other interest income, income from fees and penalties, donations, legacies, bequests made to it and accepted by the board, and any other amounts provided by this part and Part 14. General Fund transfers pursuant to Section 22954 shall be placed in a segregated account known as the Supplemental Benefit Maintenance Account within the retirement fund, which is continuously appropriated without regard to fiscal years, notwithstanding Section 13340 of the Government Code, for expenditure for the purposes of Section 24415.

(b) Disbursement of money from the retirement 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.

SEC. 29. Section 22455.5 of the Education Code is amended to read:

22455.5. (a) The Legislature finds and declares that the federal Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) requires all public employers to provide their employees with either social security coverage or membership in a qualified retirement plan.

(b) Employers shall make available criteria for membership, including optional membership, in a timely manner to all persons employed to perform creditable service subject to coverage by the Defined Benefit Program, and shall inform part-time and substitute employees, within 30 days of the date of hire, or by March 1, 1995, whichever is later, that they may elect membership in the plan's Defined Benefit Program at any time while employed. Written acknowledgment by the employee shall be maintained in employer files on a form provided by this system.

(c) Employers shall be liable to the plan for employee and employer contributions and interest with respect to the Defined Benefit Program from the date of hire, or March 1, 1995, whichever is later, in addition to system administrative and audit costs, if an audit or a member's complaint reveals noncompliance. However, no employer shall be liable for employee contributions for service performed prior to January 1, 1995.

SEC. 30. Section 22457 of the Education Code is amended to read:

22457. (a) Each county superintendent shall give immediate notice in writing to the board of the employment, death, resignation, or discharge of any person employed by the county or by a school

district or community college district in the county to perform creditable service subject to coverage by the Defined Benefit Program.

(b) Every other employing agency shall give similar notice with respect to each person it employs to perform creditable service subject to coverage by the Defined Benefit Program.

SEC. 31. Section 22458 of the Education Code is amended to read:

22458. Each employer shall provide the system with information regarding the compensation to be paid to employees subject to the Defined Benefit Program in that school year. The information shall be submitted annually as determined by the board and may include, but shall not be limited to, employment contracts, salary schedules, and local board minutes.

SEC. 32. Section 22459 of the Education Code is amended to read:

22459. (a) The county superintendent or other employing agency shall withhold the salary of any member who fails to file information required by the board in the administration of the Defined Benefit Program, or to pay amounts due from the members to the fund with respect to the Defined Benefit Program.

(b) The salary shall be withheld by the county superintendent or employing agency upon his or her own knowledge, if any, of the failure or upon notice from the board of the failure of the member to file or pay.

(c) The salary shall be withheld and not released until notice is given by the board to the county superintendent or employing agency, or until the county superintendent or agency knows otherwise, that the information has been filed or the payment has been made.

SEC. 33. Section 22502 of the Education Code is amended to read:

22502. (a) Any person employed to perform creditable service on a part-time basis who is not already a member of the Defined Benefit Program shall become a member as of the first day of subsequent employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, unless excluded from membership pursuant to Section 22601.

(b) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 34. Section 22503 of the Education Code is amended to read:

22503. (a) Any person employed to perform creditable service as a substitute teacher who is not already a member of the Defined Benefit Program shall become a member as of the first day of the pay period following the pay period in which the person performed 100 or more complete days of creditable service during the school year in one school district, community college district, or county

superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section shall not apply to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 35. Section 22504 of the Education Code is amended to read:

22504. (a) Any person employed to perform creditable service on a part-time basis who is not already a member of the Defined Benefit Program shall become a member as of the first day of the pay period following the pay period in which the person performed at least 60 hours of creditable service, if employed on an hourly basis, or 10 days of creditable service, if employed on a daily basis, during the school year, in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section shall not apply to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 36. Section 22508 of the Education Code is amended to read:

22508. (a) A member who becomes employed by the same or a different school district, community college district, or a county superintendent to perform service that requires membership in a different public retirement system, may elect to have that service subject to coverage by the Defined Benefit Program of this plan and excluded from coverage by the other public retirement system. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire in the position requiring membership in the other public retirement system. If that election is made, the service performed for the employer after the date of hire shall be considered creditable service for purposes of this part.

(b) A member of the Public Employees' Retirement System who is employed by a school district, community college district, or a county superintendent and who is subsequently employed to perform creditable service subject to coverage by the Defined Benefit Program of this plan may elect to have that service subject to coverage by the Public Employees' Retirement System and excluded from coverage by the Defined Benefit Program. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire to perform creditable service. If that election is made, creditable service performed for the employer after the date of hire shall be subject to coverage by the Public Employees' Retirement System.

(c) An election made by a member pursuant to this section shall be irrevocable.

SEC. 37. Section 22508.5 of the Education Code is amended to read:

22508.5. (a) Any person who is a member of the Defined Benefit Program of the State Teachers' Retirement Plan employed by a community college district who subsequently is employed by the Board of Governors of the California Community Colleges to perform duties that are subject to membership in a different public retirement system, shall be excluded from membership in that different system if he or she elects, in writing, and files that election in the office of the State Teachers' Retirement System within 60 days after the person's entry into the new position, to continue as a member of the Defined Benefit Program. Only a person who has achieved plan vesting is eligible to elect to continue as a member of the program.

(b) A member of the Public Employees' Retirement System who is employed by the Board of Governors of the California Community Colleges who subsequently is employed by a community college district to perform creditable service subject to coverage under the Defined Benefit Program, may elect to have that service subject to coverage by the Public Employees' Retirement System and excluded from coverage under the Defined Benefit Program pursuant to Section 20309 of the Government Code.

(c) This section shall apply to changes in employment effective on or after January 1, 1998.

SEC. 38. Section 22514 of the Education Code is amended to read:

22514. Members who have not achieved plan vesting shall become eligible for benefits under the Defined Benefit Program when total service under the Defined Benefit Program and the Public Employees' Retirement System equals the minimum required under Sections 23801 and 23804. These members shall retain vested rights to survivor and disability benefits under this plan until they qualify for the similar benefits under the Public Employees' Retirement System.

SEC. 39. Section 22516 of the Education Code is amended to read:

22516. (a) Nothing in this chapter shall be construed or applied to exclude from membership in the Defined Benefit Program any person employed to perform creditable service at a level that requires mandatory membership in the program for which he or she has the right to elect membership in the program or another retirement system and who elects membership in the other retirement system, or who is employed to perform creditable service at a level that does not require mandatory membership in the Defined Benefit Program.

(b) Service performed after becoming a member of another retirement system shall not be credited to the member under this part, nor shall contributions or benefits under this part be based upon that service or the compensation received by the member during

that period of service, except as provided in the definition of "final compensation" contained in Section 22134.

SEC. 40. Section 22601.5 of the Education Code is amended to read:

22601.5. (a) Any person employed to perform creditable service who is not already a member in the Defined Benefit Program and whose basis of employment is less than 50 percent of the full-time equivalent for the position is excluded from mandatory membership in the Defined Benefit Program.

(b) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 41. Section 22602 of the Education Code is amended to read:

22602. (a) Any person employed to perform creditable service as a substitute teacher who is not already a member in the Defined Benefit Program and who performs less than 100 complete days of creditable service in one school district, community college district, or county superintendent's office during the school year is excluded from mandatory membership in the Defined Benefit Program.

(b) This section shall not apply to persons who perform service for employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) The amendments to this section enacted during the 1995–96 Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 42. Section 22604 of the Education Code is amended to read:

22604. (a) Any person employed to perform creditable service on a part-time basis who is not already a member in the Defined Benefit Program and who performs less than 60 hours of creditable service in a pay period if employed on an hourly basis, or less than 10 days of creditable service in a pay period if employed on a daily basis, during the school year in one school district, community college district, or county superintendent's office is excluded from mandatory membership in the Defined Benefit Program.

(b) This section shall not apply to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) The amendments to this section enacted during the 1995–96 Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 43. Section 22664 of the Education Code is amended to read:

22664. The nonmember spouse who is awarded a separate account shall have the right to a service retirement allowance under this part.

(a) The nonmember spouse shall be eligible to retire for service under this part if the following conditions are satisfied:

(1) The member had at least five years of credited service during the period of marriage, at least one year of which had been performed subsequent to the most recent refund to the member of accumulated retirement contributions. The credited service may include service credited to the account of the member as of the date of the dissolution or legal separation, previously refunded service, out-of-state service, and permissive service credit that the member is eligible to purchase at the time of the dissolution or legal separation.

(2) The nonmember spouse has at least two and one-half years of credited service in his or her separate account.

(3) The nonmember spouse has attained the age of 55 years or more.

(b) A service retirement allowance of a nonmember spouse under this part shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonmember spouse has filed an application for service retirement on a form provided by the system, that is executed no earlier than six months before the effective date of the retirement allowance.

(3) The effective date is no earlier than the first day of the month in which the application is received at the system's office in Sacramento and the effective date is after the date the judgment or court order pursuant to Section 22652 was entered.

(c) (1) Upon service retirement at normal retirement age under this part, the nonmember spouse shall receive a retirement allowance that shall consist of an annual allowance payable in monthly installments equal to 2 percent of final compensation for each year of credited service.

(2) If the nonmember spouse's retirement is effective at less than normal retirement age and between early retirement age under this part and normal retirement age, the retirement allowance shall be reduced by one-half of 1 percent for each full month, or fraction of a month, that will elapse until the nonmember spouse would have reached normal retirement age.

(3) If the nonmember spouse's service retirement is effective at an age greater than normal retirement age and is effective on or after January 1, 1999, the percentage of final compensation for each year of credited service shall be determined pursuant to the following table:

Age at Retirement	Percentage
60 1/4	2.033
60 1/2	2.067

60 3/4	2.10
61	2.133
61 1/4	2.167
61 1/2	2.20
61 3/4	2.233
62	2.267
62 1/4	2.30
62 1/2	2.333
62 3/4	2.367
63 and over	2.40

(4) In computing the retirement allowance of the nonmember spouse, the age of the nonmember spouse on the last day of the month in which the retirement allowance begins to accrue shall be used.

(5) Final compensation, for purposes of calculating the service retirement allowance of the nonmember spouse under this subdivision, shall be calculated according to the definition of final compensation in Section 22134, 22135, or 22136, whichever is applicable, and shall be based on the compensation earnable of the member up to the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

The nonmember spouse shall not be entitled to use any other calculation of final compensation.

(d) If the member is or was receiving a disability allowance under this part with an effective date before or on the date the parties separated as established in the judgment or court order pursuant to Section 22652, or at any time applies for and receives a disability allowance with an effective date that is before or coincides with the date the parties separated as established in the judgment or court order pursuant to Section 22652, the nonmember spouse shall not be eligible to retire until after the disability allowance of the member terminates.

If the member who is or was receiving a disability allowance returns to employment to perform creditable service subject to coverage under the Defined Benefit Program or has his or her allowance terminated under Section 24015, the nonmember spouse may not be paid a retirement allowance until at least six months after termination of the disability allowance and the return of the member to employment to perform creditable service subject to coverage under the Defined Benefit Program, or the termination of the disability allowance and the employment or self-employment of the member in any capacity, notwithstanding Section 22132. If at the end of the six-month period, the member has not had a recurrence of the original disability or has not had his or her earnings fall below the amounts described in Section 24015, the nonmember spouse may be

paid a retirement allowance if all other eligibility requirements are met.

(1) The retirement allowance of the nonmember spouse under this subdivision shall be calculated as follows: the disability allowance the member was receiving, exclusive of the benefits for dependent children, shall be divided between the share of the member and the share of the nonmember spouse. The share of the nonmember spouse shall be the amount obtained by multiplying the disability allowance, exclusive of the benefits for dependent children, by the years of service credited to the separate account of the nonmember spouse, including service projected to the date of separation, and dividing by the projected service of the member. The nonmember spouse's retirement allowance shall be the lesser of the share of the nonmember spouse under this subdivision or the retirement allowance under subdivision (c).

(2) The share of the member shall be the total disability allowance reduced by the share of the nonmember spouse. The share of the member shall be considered the disability allowance of the member for purposes of Section 24213.

(e) The nonmember spouse who receives a retirement allowance is not a retired member under this part. However, the allowance of the nonmember spouse shall be increased by application of the improvement factor and shall be eligible for the application of supplemental increases and other benefit maintenance provisions under this part, including, but not limited to, Sections 24411, 24412, and 24415 based on the same criteria used for the application of these benefit maintenance increases to the service retirement allowances of members.

SEC. 44. Section 22713 of the Education Code is amended to read:

22713. (a) Notwithstanding any other provision of this chapter, the governing board of a school district or a community college district or a county superintendent of schools may establish regulations that allow an employee who is a member of the Defined Benefit Program to reduce his or her workload from full time to part time, and receive the service credit the member would have received if the member had been employed on a full-time basis and have his or her retirement allowance, as well as other benefits that the member is entitled to under this part, based, in part, on final compensation determined from the compensation earnable the member would have been entitled to if the member had been employed on a full-time basis.

(b) The regulations shall include, but shall not be limited to, the following:

(1) The option to reduce the member's workload shall be exercised at the request of the member and can be revoked only with the mutual consent of the employer and the member.

(2) The member shall have been employed full time to perform creditable service subject to coverage under the Defined Benefit

Program for at least 10 years including five years immediately preceding the reduction in workload.

(3) The member shall not have had a break in service during the five years immediately preceding the reduction in workload. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service. However, time spent on a sabbatical or other approved leave of absence shall not be used in computing the five-year full-time service requirement prescribed by this subdivision.

(4) The member shall have reached the age of 55 years prior to the reduction in workload.

(5) The reduced workload shall be performed for a period of time, as specified in the regulations. The period of time specified in the regulations shall not exceed 10 years.

(6) The reduced workload shall be equal to at least one-half of the full-time equivalent required by the member's contract of employment during his or her final year of full-time employment.

(7) The member shall be paid creditable compensation that is the pro rata share of the creditable compensation the member would have been paid had the member not reduced his or her workload.

(c) Prior to the reduction of a member's workload under this section, the employer in conjunction with the administrative staff of the State Teachers' Retirement System and the Public Employees' Retirement System, shall verify the member's eligibility for the reduced workload program.

(d) The member shall make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(e) The employer shall contribute to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(f) The employer shall maintain the necessary records to separately identify each member who participates in the reduced workload program pursuant to this section.

SEC. 45. Section 22714 of the Education Code is amended to read:

22714. (a) Whenever the governing board of a school district or a community college district or a county office of education, by formal action taken prior to January 1, 1999, determines pursuant to Section 44929 or 87488 that because of impending curtailment of or changes in the manner of performing services, the best interests of the district or county office of education would be served by encouraging certificated employees or academic employees to retire for service and that the retirement will either: result in a net savings

to the district or county office of education; result in a reduction of the number of certificated employees or academic employees as a result of declining enrollment; or result in the retention of certificated employees who are credentialed to teach in, or faculty who are qualified to teach in, teacher shortage disciplines, including, but not limited to, mathematics and science, an additional two years of service credit shall be granted under this part to a member of the Defined Benefit Program if all of the following conditions exist:

(1) The member is credited with five or more years of service credit and retires for service under the provisions of Chapter 27 (commencing with Section 24201) during a period of not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the employer that shall specify the period.

(2) The employer transfers to the retirement fund an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the allowance the member receives after receipt of service credit pursuant to this section and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of service credit pursuant to this section and the amount the member would have received without the service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22400 and shall be subject to Section 24415. The transfer to the retirement fund shall be made in a manner, and time period not to exceed four years, that is acceptable to the Teachers' Retirement Board. The employer shall transfer the required amount for all eligible employees who retire pursuant to this section.

(3) The employer transmits to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(4) The employer has considered the availability of teachers or academic employees to fill the positions that would be vacated pursuant to this section.

(b) (1) The school district shall demonstrate and certify to the county superintendent that the formal action taken would result in either: (A) a net savings to the district; (B) a reduction of the number of certificated employees as a result of declining enrollment, as computed pursuant to Section 42238.5; or (C) the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

(2) The county superintendent shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502. A

district that qualifies under subparagraph (B) of paragraph (1) shall also certify that it qualifies as a declining enrollment district as computed pursuant to Section 42238.5.

(3) The school district shall reimburse the county superintendent for all costs to the county superintendent that result from the certification.

(c) (1) The county office of education shall demonstrate and certify to the Superintendent of Public Instruction that the formal action taken would result in either: (A) a net savings to the county office of education; (B) a reduction of the number of certificated employees as a result of declining enrollment; or (C) the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

(2) The Superintendent of Public Instruction shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502.

(3) The Superintendent of Public Instruction may request reimbursement from the county office of education for all administrative costs that result from the certification.

(d) (1) The community college district shall demonstrate and certify to the chancellor's office that the formal action taken would result in either: (A) a net savings to the district; (B) a reduction in the number of academic employees as a result of declining enrollment, as computed pursuant to subdivision (c) of Section 84701; or (C) the retention of faculty who are qualified to teach in teacher shortage disciplines.

(2) The chancellor shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 84040.5. A community college district that qualifies under subparagraph (B) of paragraph (1) of subdivision (b) of this section shall also certify that it qualifies as a declining enrollment district as computed pursuant to subdivision (c) of Section 84701.

(3) The chancellor may request reimbursement from the community college for all administrative costs that result from the certification.

(e) The opportunity to be granted service credit pursuant to this section shall be available to all members employed by the school district, community college district, or county office of education who meet the conditions set forth in this section.

(f) The amount of service credit shall be two years.

(g) Any member of the Defined Benefit Program who retires under this part for service under the provisions of Chapter 27 (commencing with Section 24201) with service credit granted under

this section and who subsequently reinstates shall forfeit the service credit granted under this section.

(h) This section shall not be applicable to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the effective date of the formal action, or if the member is not otherwise eligible to retire for service.

SEC. 46. Section 22717 of the Education Code is amended to read:

22717. (a) A member shall be granted credit at service retirement for each day of accumulated and unused leave of absence for illness or injury for which full salary is allowed to which the member was entitled on the member's final day of employment with the employer by which the member was last employed to perform creditable service subject to coverage by the Defined Benefit Program.

(b) The amount of service credit to be granted shall be determined by dividing the number of days of accumulated and unused leave of absence for illness or injury by the number of days of service the employer requires the member's class of employees to perform in a school year during the member's final year of creditable service subject to coverage by the Defined Benefit Program, which shall not be less than the minimum standard specified in Section 22138.5. The number of days shall not include school and legal holidays. In no event shall the divisor be less than 175. For members employed less than full time, the standards identified in Section 22138.5 shall be considered as the minimum full-time equivalent. For those standards identified in Section 22138.5 that are applicable to teachers or instructors and that are expressed only in terms of hours or instructional hours, the number of hours or instructional hours shall be divided by six to determine the number of days.

(c) When the member has made application for service retirement under this part, the employer shall certify to the board, within 30 days following the effective date of the member's service retirement, the number of days of accumulated and unused leave of absence for illness or injury that the member was entitled to on the final day of employment. The board may assess a penalty on delinquent reports.

(d) This section shall be applicable to any person who retires on or after January 1, 1999.

SEC. 47. Section 22718 of the Education Code is amended to read:

22718. (a) The Teachers' Retirement Board shall bill school employers for service credit granted for unused excess sick leave under this part, subject to the following provisions:

(1) (A) In addition to the certification of sick leave days, the employer shall also certify the number of unused excess sick leave days.

(B) Excess sick leave days granted by an employer other than the member's last employer shall be deemed to be granted by the last employer and shall be included in the certification if the member was eligible to use those excess sick leave days while he or she was employed by the last employer.

(2) The billing shall be authorized only if the employer grants more than one day of sick leave per pay period of at least four weeks to members of the Defined Benefit Program.

(3) The employer shall be billed only for the present value of the unused excess sick leave days and any subsequent adjustments to the billing shall be billed or refunded, as appropriate, to the employer.

(4) (A) The employer shall remit the amount billed to the system with the certification required by Section 22717 within 30 days after the effective date of the member's retirement or within 30 days after the date the system has notified the employer that a certification must be made, whichever is later.

(B) If payment is not received within 30 days, the present value shall be recalculated to include regular interest from the due date to the date full payment is received.

(C) If the system has billed the employer for an additional amount, the employer shall remit the additional amount within 30 days after the date of the billing. If payment is not received for the additional amount within 30 days, the present value shall be recalculated to include regular interest from the due date to the date full payment is received.

(b) If a school employer fails to pay a bill charged according to subdivision (a), the Teachers' Retirement Board may request the Superintendent of Public Instruction or the Chancellor of the California Community Colleges, as appropriate, to reduce state apportionments to the school employer by an amount equal to the amount billed. The superintendent or chancellor shall make the reduction, and if requested by the board, direct the Controller to reduce the amount transferred from the General Fund to Section A or Section B, as appropriate, of the State School Fund by an equal amount, which shall instead be transferred to the Teachers' Retirement Fund.

SEC. 48. Section 22724 is added to the Education Code, to read:

22724. (a) To determine the number of excess sick leave days to which a member is entitled when he or she retires, the employer shall deduct the days of sick leave used by the member from the member's accumulated and unused sick leave balance according to the following method:

(1) Sick leave usage shall first be deducted from the accumulated and unused sick leave balance existing on July 1, 1986.

(2) Sick leave usage shall next be deducted from basic sick leave days granted to the member by an employer after June 30, 1986.

(3) Sick leave usage shall then be deducted from any excess sick leave days granted to the member by an employer after June 30, 1986.

(b) Upon request from the board, the employer shall submit sick leave records of past years for audit purposes.

SEC. 49. Section 22801 of the Education Code is amended to read:

22801. (a) A member who elects to receive additional service credit as provided in this chapter shall pay, prior to retirement, all contributions with respect to that service at the contribution rate for additional service credit, adopted by the board as a plan amendment, in effect at the time of election. If the system is unable to inform the member or beneficiary of the amount required to purchase additional service credit prior to the effective date of the applicable allowance, the member or beneficiary may make the required payment within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later. The payment shall be paid in full before a member or beneficiary receives any adjustment in the appropriate allowance due because of that payment. Contributions shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars ($25).

(b) If the member is employed to perform creditable service subject to coverage by the Defined Benefit Program at the time of the election, the contributions shall be based upon the compensation earnable in the current school year or either of the two immediately preceding school years, whichever is highest.

(c) If the member is not employed to perform creditable service subject to coverage by the Defined Benefit Program at the time of the election, the contributions shall be based upon the compensation earnable in the last school year of credited service or either of the two immediately preceding school years, whichever is highest.

(d) The employer may pay the amount required as employer contributions for additional service credited under paragraphs (2), (6), (7), (8), and (9) of subdivision (a) of Section 22803.

(e) The Public Employees' Retirement System shall transfer the actuarial present value of the assets of a person who makes an election pursuant to paragraph (10) of subdivision (a) of Section 22803.

(f) Regular interest shall be charged on all contributions from the end of the school year on which the contributions were based to the date of payment.

(g) Regular interest shall be charged on the monthly unpaid balance if the member pays in installments. Regular interest shall not be charged or be payable for the period of a delay caused by the system's inability or failure to determine and inform the member or beneficiary of the amount of contributions and interest that is payable. The period of delay shall commence on the 20th day following the day on which the member or beneficiary who wishes to make payment evidences in writing to the system that he or she is ready, willing, and able to make payment to the system. The period

of delay shall cease on the first day of the month following the mailing of notification of contributions and interest payable.

SEC. 50. Section 22803 of the Education Code is amended to read:

22803. (a) A member may elect to receive credit for any of the following:

(1) Service performed in a teaching position in a publicly supported and administered university or college in this state.

(2) Service performed in a certificated teaching position in a child care center operated by a county superintendent of schools or a school district in this state.

(3) Service performed in a teaching position in the California School for the Deaf or the California School for the Blind, or in special classes maintained by the public schools of this state for the instruction of the deaf, the hard of hearing, the blind, or the semisighted.

(4) Service performed in a certificated teaching position in a federally supported and administered Indian school in this state.

(5) Time served, not to exceed two years, in a certificated teaching position in a job corps center administered by the United States government in this state if the member was employed to perform creditable service subject to coverage under the Defined Benefit Program within one year prior to entering the job corps and returned to employment to perform creditable service subject to coverage under the Defined Benefit Program within six months following the date of termination of service in the job corps.

(6) Time spent on a sabbatical leave after July 1, 1956.

(7) Time spent on an approved leave to participate in any program under the federal Mutual Educational and Cultural Exchange Program.

(8) Time spent on an approved maternity or paternity leave of two years or less in duration, regardless of whether or not the leave was taken before or after the addition of this subdivision.

(9) Time spent on an approved leave, up to four months in any 12-month period, for family care or medical leave purposes, as defined by Section 12945.2 of the Government Code, as it read on the date leave was granted, excluding maternity and paternity leave.

(10) Time spent employed by the Board of Governors of the California Community Colleges in a position subject to coverage by the Public Employees' Retirement System between July 1, 1991, and December 31, 1997, provided the member has elected to return to coverage under the State Teachers' Retirement System pursuant to Section 20309 of the Government Code.

(b) In no event shall the member receive credit for service or time described in paragraphs (1) to (10), inclusive, of subdivision (a) if the member has received or is eligible to receive credit for the same service or time in the Cash Balance Benefit Program under Part 14 (commencing with Section 26000) or another retirement system.

SEC. 51. Section 22805 of the Education Code is amended to read:

22805. (a) A member may elect to receive credit under this part for time served in the active military service of the United States or of this state, including active service in any uniformed auxiliary to any branch of that military service authorized as an auxiliary by Congress or the Legislature, or in the full-time paid service of the American Red Cross prior to September 1957, if both of the following conditions exist:

(1) The time served was during war with any foreign power or during other national emergency, or in time of peace if the member was drafted for that service by the United States government.

(2) The member was employed to perform creditable service subject to coverage under the Defined Benefit Program within one year prior to entering that service. Time included under this section shall be considered as served in the state in which the member was last employed before entering that service.

(b) Time during which the member was absent without compensation for other cause, on leave, or otherwise, shall not be included.

SEC. 52. Section 22820 of the Education Code is amended to read:

22820. (a) A member, other than a retired member, may elect to purchase out-of-state service credited in a public retirement system for service covering public education in another state or territory of the United States or by the United States for its citizens. In no event shall the member receive credit for this service if the member has credit or is eligible to receive credit for the same service in the Cash Balance Benefit Program under Part 14 (commencing with Section 26000) or another public retirement system, excluding social security.

(b) The amount of out-of-state service for which a member may purchase credit may not exceed the number of years of service credited to the member in the out-of-state retirement system or 10 years, whichever is less.

(c) Out-of-state service credit may be purchased under this section by means of any of the following actions:

(1) Paying an amount equal to the amount refunded from the other public retirement system and receiving service credit under the Defined Benefit Program pursuant to subdivision (a) of Section 22823.

(2) Paying the contributions required under the Defined Benefit Program pursuant to subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(3) Paying an amount equal to the amount refunded from the other public retirement system and an additional amount in accordance with subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(d) Contributions made to a plan qualified under Section 403(b) of the Internal Revenue Code may not be used to purchase credit for out-of-state service.

(e) Compensation for out-of-state service shall not be used in determining the highest average annual compensation earnable when calculating final compensation.

(f) The service credit purchased under this section shall not be used to meet the eligibility requirements for benefits provided under Sections 24001 and 24101.

SEC. 53. Section 22823 of the Education Code is amended to read:

22823. (a) A member who elects to receive credit for out-of-state service as provided in this chapter shall pay all contributions with respect to that service at the contribution rate for additional service credit adopted by the board as a plan amendment, in effect at the time of election.

(b) (1) Any payment that a member may make to the system to obtain credit for out-of-state service pursuant to this chapter shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member or beneficiary of the amount required to purchase out-of-state service prior to the effective date of the applicable allowance, the member or beneficiary may make payment in full within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later.

(c) Contributions for out-of-state service credit shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars ($25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

SEC. 54. Section 22826 of the Education Code is amended to read:

22826. (a) A member may elect to receive up to five years of credit for nonqualified service provided the member is vested in the Defined Benefit Program as provided in Section 22156.

(b) A member who elects to receive credit for nonqualified service as provided in this chapter shall contribute to the retirement fund the actuarial cost of the service, including interest as appropriate, as determined by the board based on the most recent valuation of the plan with respect to the Defined Benefit Program.

(1) Payment that a member may make to the system to obtain credit for nonqualified service shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member of the amount required to purchase nonqualified service prior to the effective date of the applicable allowance, the member may make payment in full within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later.

(c) Contributions for nonqualified service credit shall be made in a lump sum or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars ($25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

SEC. 55. Section 22955 of the Education Code is amended to read:

22955. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 1999, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 3.102 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments.

(b) Notwithstanding Section 13340 of the Government Code, commencing October 1, 1998, a continuous appropriation, in addition to the appropriation made by subdivision (a), is hereby annually made from the General Fund to the Controller for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 0.524 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. The percentage shall be adjusted to reflect the contribution required to fund the normal cost deficit or the unfunded obligation as determined by the board based upon a recommendation from its actuary. If a rate increase is required, the adjustment may be for no more than 0.25 percent per year and in no case may the transfer made pursuant to this subdivision exceed 1.505 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based. At any time when there is neither an unfunded obligation nor a normal cost deficit, the percentage shall be reduced to zero.

The funds transferred pursuant to this subdivision shall first be applied to eliminating on or before June 30, 2027, the unfunded actuarial liability of the fund identified in the actuarial valuation as of June 30, 1997.

(c) For the purposes of this section, the term "normal cost deficit" means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22311 and the total of the member contribution rate required under Section 22901 and the employer contribution rate required under Section 22950, and shall exclude (1) the portion for unused sick leave service credit granted pursuant to Section 22717, and (2) the cost of benefit increases that occur after July 1, 1990. The contribution rates prescribed in Section

22901 and Section 22950 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the creditable compensation upon which member contributions under this part are based to determine the dollar amount of the normal cost deficit for the year.

(d) Pursuant to Section 22001 and case law, members are entitled to a financially sound retirement system. It is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(e) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair, the contractual obligations determined by the court in California Teachers' Association v. Cory, 155 Cal.App.3d 494.

(f) Subdivision (b) shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or change in contribution rate under this part that occurs after July 1, 1990.

(g) The amendments to this section during the 1991–92 Regular Session shall be construed and implemented to be in conformity with the judicial intent expressed by the court in California Teachers' Association v. Cory, 155 Cal.App.3d 494.

SEC. 56. Section 23003 of the Education Code is amended to read:

23003. (a) If a county superintendent of schools or employing agency or school district or community college district that reports directly to the system fails to make payment of contributions as provided in Section 23002, the board may assess penalties.

(b) The board may charge regular interest on any delinquent contributions under this part.

SEC. 57. Section 23004 of the Education Code is amended to read:

23004. The county superintendent of schools or employing agency shall, or a school district or community college district may, with approval of the board, submit a report monthly to the system containing such information as the board may require in the administration of the plan.

SEC. 58. Section 23006 of the Education Code is amended to read:

23006. (a) If a county superintendent of schools or employing agency or school district or community college district that reports directly to the system, submits monthly reports late or in unacceptable form, the board may assess penalties.

(b) The board may assess penalties, based on the sum of the employer and employee contributions required under this part by the report for late or unacceptable submission of reports, at a rate of interest equal to the regular interest rate or a fee of five hundred dollars ($500), whichever is greater.

SEC. 59. Section 23201 of the Education Code is amended to read:

23201. Any person whose accumulated retirement contributions were refunded, who wishes to establish concurrent membership, and who has received, or will qualify to receive, a retirement allowance from one or more of the retirement systems defined in Section

22115.2, may elect to redeposit the accumulated retirement contributions that were refunded, with regular interest from the date of refund to the date of payment, without being employed to perform creditable service subject to coverage under the Defined Benefit Program.

SEC. 60. Section 23702 of the Education Code is amended to read:

23702. (a) All members in the Defined Benefit Program on October 15, 1992, who are not receiving a disability allowance or a retirement allowance with an effective date prior to October 16, 1992, shall be eligible to make an irrevocable election, pursuant to this chapter, to retain coverage under either the disability allowance and family allowance programs or to have coverage under the disability retirement and survivor benefits programs.

(b) The member's eligibility to participate in the election shall be based on the member's status in the Defined Benefit Program on October 15, 1992, only, and not on prior or subsequent events.

SEC. 61. Section 23805.5 is added to the Education Code, to read:

23805.5. (a) A parent claiming a benefit under Section 23805 is dependent if all of the following apply:

(1) The parent was receiving one-half or more of his or her support from the member for the tax year preceding the member's death.

(2) The parent was declared as a dependent on the income tax return of the member for at least one of the two tax years preceding the member's death.

(3) No one else has assumed at least one-half of the parent's support in the tax year of the member's death.

(4) The parent has net assets of not more than twenty-five thousand dollars ($25,000), excluding his or her personal residence and personal property therein.

(b) A person claiming a benefit under Section 23805 or his or her guardian shall furnish the board a state or federal income tax return and any other evidence regarding his or her financial status as the board may require.

SEC. 62. Section 23851 of the Education Code is amended to read:

23851. (a) A death payment of not less than twenty thousand dollars ($20,000) shall be paid to the beneficiary, as designated pursuant to Section 23300, upon receipt of proof of death of an active member, who had one or more years of credited service, at least one of which had been performed subsequent to the most recent refund of accumulated retirement contributions, if the member died during any one of the following periods:

(1) While in employment for which creditable compensation is paid.

(2) Within four months after termination of creditable service or termination of employment, whichever occurs first.

(3) Within 12 months of the last day for which creditable compensation was paid, if the member was on an approved leave of

absence without creditable compensation for reasons other than disability or military service.

(b) A death payment pursuant to this section shall not be payable for the death of a member that occurs within one year commencing with the effective date of termination of the service retirement allowance pursuant to Section 24208 or during the six calendar months commencing with the effective date of termination of the disability retirement allowance pursuant to Section 24117.

(c) The board may adjust the death payment amount following each actuarial valuation based on changes in the All Urban California Consumer Price Index and adopt as a plan amendment with respect to the Defined Benefit Program any adjusted amount.

(d) A designated beneficiary may waive the right to the death payment in accordance with the requirements established by the system.

SEC. 63. Section 24101.5 of the Education Code is amended to read:

24101.5. A member shall not be eligible for disability retirement under the Defined Benefit Program while on a leave of absence to serve as a full-time, elected officer of an employee organization, even if the member receives service credit under Section 22711.

SEC. 64. Section 24201 of the Education Code is amended to read:

24201. (a) A member may retire for service under this part upon written application for retirement to the board, under paragraph (1) or (2) as follows:

(1) The member has attained the age of 55 years or more and has at least five years of credited service, at least one year of which has been performed subsequent to the most recent refund of accumulated retirement contributions. The five years of credited service may include out-of-state service purchased pursuant to Section 22820. The number of years of credited service performed in California shall not be less than the number of years necessary to determine final compensation pursuant to Section 22134 or 22135, whichever is applicable to the member.

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, excluding the federal social security system, if the member has attained the age of 55 years or older and retires concurrently under one or more of the retirement systems with which the member has concurrent membership as defined in Section 22115.2.

(b) Application for retirement under paragraph (2) of subdivision (a) may be made even if the member has not earned five years of service.

SEC. 65. Section 24203.5 of the Education Code is amended to read:

24203.5. (a) The percentage of final compensation used to compute the allowance pursuant to Section 24202.5, 24203, or 24205 of a member retiring on or after January 1, 1999, who has 30 or more

years of credited service, excluding service credited pursuant to Section 22714, 22715, or 22717, shall be increased by two-tenths of 1 percentage point, provided that the sum of the percentage of final compensation used to compute the allowance in Section 24202.5, 24203, or 24205, including any adjustments for retiring before the normal retirement age, and the additional percentage provided by this section does not exceed 2.40 percent. For purposes of establishing eligibility for the increased allowance pursuant to this section only, credited service shall include credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652. A nonmember spouse shall also be eligible for the increased allowance pursuant to this section if the member had 30 or more years of credited service on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

(b) Nonqualified service credit for which contributions pursuant to Section 22826 were made in a lump sum on or after January 1, 2000, or for which the first installment was made on or after January 1, 2000, shall not be included in determining the eligibility for an increased allowance pursuant to this section.

(c) The amendments made to subdivision (a) in the first year of the 1999–2000 Regular Session are declaratory of existing law.

SEC. 66. Section 24205 of the Education Code is repealed.

SEC. 67. Section 24205 is added to the Education Code, to read:

24205. Any member retiring prior to the age of 60 years, and who has attained the age of 55 years, may elect to receive one-half of the service retirement allowance for normal retirement age for a limited time and then revert to the full retirement allowance for normal retirement age.

(a) The retirement allowance shall be based on service credit and final compensation as of the date of retirement for service and shall be calculated with the factor for normal retirement age.

(b) If the member elects a joint and survivor option under Section 24300, the actuarial reduction shall be based on the member's and beneficiary's ages as of the effective date of the early retirement. If the member elected a preretirement option under Section 24307, the actuarial reduction shall be based on the member's and beneficiary's ages as determined by provisions of that section.

(c) One-half of the retirement allowance as of the age of 60 years shall be paid for a period of time equal to twice the elapsed time between the effective date of retirement and the date of the retired member's 60th birthday.

(d) The full retirement allowance as calculated under subdivision (a) or (b) shall begin to accrue as of the first of the month following the reduction period as specified in subdivision (c). The full retirement allowance shall not begin to accrue prior to this time under any circumstances, including, but not limited to, divorce or death of the named beneficiary.

(e) The annual improvement factor provided for in Sections 22140 and 22141 shall be based upon the retirement allowance as calculated under subdivision (a) or (b). The improvement factor shall begin to accrue on September 1 following the retired member's 60th birthday. These increases shall be accumulated and shall become payable when the full retirement allowance for normal retirement age first becomes payable.

(f) Any ad hoc benefit increase with an effective date prior to the retired member's 60th birthday shall not affect any allowance payable under this section. Only those ad hoc improvements with effective dates on or after the retired member's 60th birthday shall be accrued and accumulated and shall first become payable when the full retirement allowance for normal retirement age becomes payable.

(g) The cancellation of an option election in accordance with Section 24305 shall not cancel the election under this section. Upon cancellation of the joint and survivor option, one-half of the retired member's retirement allowance as calculated under subdivision (a) shall become payable for the balance of the reduction period specified in subdivision (c).

(h) If a retired member who has elected a joint and survivor option dies during the period when the reduced allowance is payable, the beneficiary shall receive one-half of the allowance payable to the beneficiary until the date when the retired member would have received the full retirement allowance for normal retirement age. At that time, the beneficiary's allowance shall be increased to the full amount payable to the beneficiary plus the appropriate annual improvement factor increases and ad hoc increases.

SEC. 68. Section 24211 of the Education Code is amended to read:

24211. When a member who has been granted a disability allowance under this part after June 30, 1972, returns to employment subject to coverage under the Defined Benefit Program and performs:

(a) Less than three years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance which is the sum of the allowance calculated on service credit accrued after the termination date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable and projected final compensation, plus the greater of either of the following:

(1) A service retirement allowance calculated on service credit accrued as of the effective date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and projected final compensation excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing

with Section 22820), to the termination date of the disability allowance.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(b) Three or more years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance that is the greater of the following:

(1) A service retirement allowance calculated on all actual and projected service excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(c) The allowance shall be increased by an amount based on any service credited pursuant to Section 22714, 22715, or 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and final compensation using compensation earnable, or projected final compensation, or a combination of both.

SEC. 69. Section 24212 of the Education Code is amended to read:

24212. (a) If a disability allowance granted under this part after June 30, 1972, is terminated for reasons other than those specified in Section 24213 and the member does not return to employment subject to coverage under the Defined Benefit Program, the member's service retirement allowance, when payable, shall be based on projected service, excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), projected final compensation, and the age of the member on the last day of the month in which the retirement allowance begins to accrue. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance excluding children's portions.

(b) The allowance shall be increased by an amount based on any service credited pursuant to Section 22714, 22715, or 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and final compensation using compensation earnable, or projected final compensation, or a combination of both.

SEC. 70. Section 24213 of the Education Code is amended to read:

24213. (a) When a member who has been granted a disability allowance under this part after June 30, 1972, attains normal retirement age, or at a later date when there is no dependent child, the disability allowance shall be terminated and the member shall be

eligible for service retirement. The retirement allowance shall be calculated on the projected final compensation and projected service to normal retirement age, excluding service credited pursuant to Section 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820). The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance. The allowance shall be increased by an amount based on any service credited pursuant to Section 22714, 22715, or 22717 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and projected final compensation to normal retirement age.

(b) Upon retirement, the member may elect to modify the service retirement allowance payable in accordance with any option provided under this part.

SEC. 71. Section 24300 of the Education Code is amended to read:

24300. (a) Any member prior to the effective date of the member's retirement under this part may elect an option that would provide an actuarially modified retirement allowance payable throughout the life of the member and the member's option beneficiary as follows:

(1) Option 2. The modified retirement allowance shall be paid to the retired member and upon the retired member's death, an allowance equal to the modified amount the retired member was receiving shall be paid to the option beneficiary

(2) Option 3. The modified retirement allowance shall be paid to the retired member and upon the retired member's death, an allowance equal to one-half of the modified amount the retired member was receiving shall be paid to the option beneficiary.

(3) Option 4. The modified retirement allowance shall be paid to the retired member as long as both the retired member and the option beneficiary are living. Upon the death of either the retired member or the option beneficiary, an allowance equal to two-thirds of the modified amount that the retired member was receiving shall be paid to the surviving retired member or the surviving option beneficiary.

(4) Option 5. The modified retirement allowance shall be paid to the retired member as long as both the retired member and the option beneficiary are living. Upon the death of either the retired member or the option beneficiary, an allowance equal to one-half of the modified amount that the retired member was receiving shall be paid to the surviving retired member or surviving option beneficiary.

(5) Option 6. The modified retirement allowance shall be paid to the retired member and upon the retired member's death, an allowance equal to the modified amount the retired member was receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the retired member, the retirement

allowance without modification for the option shall be payable to the retired member.

(6) Option 7. The modified retirement allowance shall be paid to the retired member and upon the retired member's death, an allowance equal to one-half of the modified amount the retired member was receiving shall be paid to the option beneficiary. However, if the option beneficiary predeceases the retired member, the retirement allowance without modification for the option shall be payable to the retired member.

(7) Option 8. (A) Any member prior to the effective date of the member's retirement may designate multiple option beneficiaries. The member who has designated more than one option beneficiary shall select an option for each beneficiary designated that would provide an actuarially modified retirement allowance payable throughout the lives of the member and the member's option beneficiaries.

(B) The modified retirement allowance shall be paid to the retired member as long as the retired member and at least one of the option beneficiaries are living. Upon the retired member's death, an allowance shall be paid to each surviving option beneficiary in accordance with the option elected respective to that beneficiary. However, if one or more of the option beneficiaries predeceases the retired member, the retired member's allowance shall be adjusted in accordance with the option elected for the deceased beneficiary. The member shall determine the percentage of the unmodified allowance that will be modified by the election of Option 2, Option 3, Option 4, Option 5, Option 6, or Option 7 under this option, the aggregate of which shall be no greater than 100 percent of the member's unmodified allowance. The election of this option is subject to approval by the board.

(b) The option beneficiary, for purposes of this section, shall have been designated by the member on a form prescribed by the system and duly executed and filed with the system at the time of the member's retirement.

(c) A member may revoke or change an election of an option at any time prior to the effective date of the member's retirement under this part.

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

SEC. 72. Section 24305.5 of the Education Code is amended to read:

24305.5. (a) An option elected under Section 24300 may be canceled by a retired member if the option beneficiary is not the retired member's spouse or former spouse. A retired member may cancel the option before or after issuance of the first retirement allowance payment and shall designate his or her spouse as the new option beneficiary and the same or a different joint and survivor option described in Section 24300.

(b) The retired member shall notify the board, in writing on a form provided by the system, of the designation of the new option beneficiary. Notification shall include a certified copy of the marriage certificate and a properly executed form for the change.

(c) The effective date of the new election shall be six months following the date notification is received by the board, provided both the retired member and the new designated option beneficiary are then living.

(d) The selection of the new option beneficiary and the new option under this section and Section 24300 shall be subject to a further actuarial modification of the modified retirement allowance. In no event may a retired member elect a joint and survivor option that would result in any additional liability to the fund. Modification of the retirement allowance because of the new option beneficiary and the new option shall be based on the ages of the retired member and the new option beneficiary as of the effective date of the new election.

SEC. 73. Section 24306 of the Education Code is amended to read:

24306. (a) (1) If an option beneficiary designated in the election of an Option 2, Option 3, Option 4, or Option 5, or in the election of Option 2, Option 3, Option 4, or Option 5 under Option 8, predeceases the retired member, the retired member may designate either or both of the following:

(A) A new option beneficiary.

(B) A different joint and survivor option described in Section 24300.

(2) The effective date of the change shall be six months following the date notification is received by the board, provided both the retired member and the designated option beneficiary are then living. Notification shall include proof of death of the predeceased beneficiary and a properly executed form for the change.

(3) The selection of the new joint and survivor option under this subdivision and Section 24300 is subject to a further actuarial modification of the modified retirement allowance. In no event may a retired member elect a joint and survivor option that would result in any additional liability to the fund.

(b) If an option beneficiary designated in the election of an Option 6 or Option 7 or in the election of Option 6 or Option 7 under Option 8, pursuant to Section 24300 or 24307 predeceases the retired member, that portion of the retirement allowance attributable to Option 6 or Option 7 without modification for the option shall be payable to the retired member upon notification to the board and shall commence to accrue to the retired member as of the day following the date of the death of the option beneficiary. Notification to the board shall include proof of death of the beneficiary.

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

SEC. 74. Section 24307 of the Education Code is amended to read:

24307. (a) A member who qualifies to apply for retirement under Section 24201 or 24203 may make a preretirement election of an option, as provided in Section 24300 without right of revocation or change after the effective date of retirement, except as provided in this part. The preretirement election of an option shall become effective on the date a properly executed form prescribed by the system is signed, providing the election is received in the system's office in Sacramento within 30 days after the date of signature.

(b) A member who makes a preretirement election of an Option 2, Option 3, Option 4, Option 5, Option 6, or Option 7 may subsequently make a preretirement election of Option 8. The member may retain the same option and the same option beneficiary as named in the prior preretirement election, as an option under Option 8.

(c) Upon the member's death prior to the effective date of retirement, the beneficiary who was designated under the option elected and who survives shall receive an allowance calculated under the option, under the assumption that the member retired for service on the date of death. The payment of the allowance to the option beneficiary shall be in lieu of the family allowance provided in Section 23804, the payment provided in paragraph (1) of subdivision (a) of Section 23802, the survivor benefit allowance provided in Section 23854, and the payment provided in subdivisions (a) and (b) of Section 23852, except that if the beneficiary dies before all of the member's accumulated retirement contributions are paid, the balance, if any, shall be paid to the estate of the person last receiving or entitled to receive the allowance. The accumulated annuity deposit contributions and the death payment provided in Sections 23801 and 23851 shall be paid to the beneficiary in a lump sum.

(d) If the member subsequently retires for service, and the elected option has not been canceled pursuant to Section 24309, a modified service retirement allowance computed under Section 24300 and the option elected shall be paid.

(e) The amount of the service retirement allowance prior to applying the option factor shall be calculated as of the earlier of the member's age at death before retirement or age on the last day of the month in which the member requested service retirement be effective. The modification of the service retirement allowance under the option elected shall be based on the ages of the member and the beneficiary designated under the option, at the date the election was signed.

(f) A member who terminates the service retirement allowance pursuant to Section 24208 shall not be eligible to file a preretirement election of an option until one calendar year elapses from the date the allowance is terminated.

(g) The system shall inform members who are qualified to make a preretirement election of an option, through the annual statements of account, that the election of an option can be made.

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

SEC. 75. Section 24600 of the Education Code is amended to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability and ceases on the earlier of the day of the member's death or the day on which the disability allowance terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance. An allowance payable because of a full-time student shall terminate on the first day of the month following the end of the school quarter or semester that is in progress in the month the full-time student attains 22 years of age. Any adjustment to an allowance because of a full-time student's periods of nonattendance shall be made as follows: the allowance shall cease on the first day of the month in which return to full-time attendance was required and shall begin to accrue again on the first day of the month in which full-time attendance resumes.

(g) Supplemental payments issued under this part pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive.

(h) Notwithstanding any other provision of this part or other law, distributions from the plan with respect to the Defined Benefit Program shall be made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder, and the required beginning date of benefit

payments that represent the entire interest of the member in the plan with respect to the Defined Benefit Program shall be as follows:

(1) In the case of a refund of contributions, as described in Chapter 12 (commencing with Section 23100) of this part, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70 $^{1}/_{2}$ years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22150, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70 $^{1}/_{2}$ years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), "terminates employment" means the later of the termination of employment subject to coverage by the Defined Benefit Program or the termination of employment in a position requiring or permitting membership in another public retirement system in this state the compensation from which may be included in final compensation under Section 22127.

(j) This section shall become operative on January 1, 2002.

SEC. 76. Section 24615 of the Education Code is amended to read:

24615. (a) If the board determines that contributions are due the system under this part from a retired member, disabled member, or a person who has died and the person is unable to pay the amount due, the board may withhold all or part of subsequent payments due the retired member, disabled member, or survivor, until the amounts withheld equal the contributions due plus regular interest to the date of payment. Total contributions plus regular interest due shall be recovered by the system within 18 months.

(b) Any payment of contributions that a member or beneficiary is required by law to make to the system shall be paid upon receipt of written notice from the system. Payment may be made either in a lump sum or installments as permitted by the system. Payment of contributions due the system not discovered or unpaid, for whatever reason, prior to the time or retirement, disability, or death shall be paid prior to granting an allowance or benefit to the member or beneficiary unless, in the opinion of the board, the making of the payment prior to receipt of an allowance or benefit would impose an undue hardship, in which case payment may be made by the system withholding not more than 18 consecutive monthly installments from payments due from the system. Those installments shall not be less than twenty-five dollars ($25) per month except for the last installment, that may be less.

SEC. 77. Section 26135 of the Education Code is amended to read:

26135. "Plan year" means the calendar, policy, or fiscal year on which the records of the plan are kept, with respect to the Cash Balance Benefit Program. The board by means of plan amendment shall determine the plan year.

SEC. 78. Section 26202 of the Education Code is amended to read:

26202. (a) The board shall establish a Gain and Loss Reserve within the Teachers' Retirement Fund for the Cash Balance Benefit Program. The board has sole authority to administer the Gain and Loss Reserve to be drawn upon to the extent necessary to credit interest to employee accounts and employer accounts at the minimum interest rate during years in which the investment earnings of the plan with respect to the Cash Balance Benefit Program are not sufficient for that purpose, and, where necessary, to provide additions to the Annuitant Reserve for monthly annuity payments.

(b) The board shall establish and periodically review goals regarding the sufficiency of the Gain and Loss Reserve based on the recommendation of the actuary.

(c) In the event that the total amount of investment earnings of the plan with respect to the Cash Balance Benefit Program for any plan year exceeds the sum of the total amount required to credit all employee and employer accounts at the minimum interest rate for the plan year plus the administrative costs of the plan with respect to the Cash Balance Benefit Program for the plan year, the board shall determine the amount, if any, that is to be credited to the Gain and Loss Reserve for the plan year. That determination shall be made upon recommendation of the actuary following the adoption by the board of the actuarial valuation undertaken following the plan year pursuant to Section 26202, but no later than June 30 following the end of the plan year. In determining whether an amount is to be credited to the Gain and Loss Reserve, the board shall consider the sufficiency of the reserve in light of the goal established for the sufficiency and the recommendations of the actuary.

SEC. 79. Section 26215 of the Education Code is amended to read:

26215. (a) Information filed with the system by a participant or beneficiary is confidential and shall be used by the system for the sole purpose of carrying into effect the provisions of this part. No official or employee of the system who has access to the individual records of a participant or beneficiary shall divulge any confidential information concerning those records to any person except in the following instances:

(1) To the participant or beneficiary to whom the information relates.

(2) To the authorized representative of the participant or beneficiary.

(3) To the governing board of the participant's current or former employer.

(4) To any department, agency, or political subdivision of this state.

(5) To other individuals as necessary to locate a person to whom a benefit may be payable.

(6) Pursuant to subpoena.

(b) Information filed with the system in a beneficiary designation form may be released after the death of the participant to those persons who may provide information necessary for the distribution of benefits.

(c) The information is not open to inspection by anyone except the board and its officers and employees of the system, and any person authorized by statute to make inspections.

SEC. 80. Section 26301 of the Education Code is amended to read:

26301. (a) Employers shall report, on a form prescribed by the system, contributions paid on behalf of each participant in each pay period, along with all other information required by the system no later than 10 working days following the last day of the pay period in which the salary was earned, and the report shall be delinquent immediately thereafter.

(b) The board may assess a penalty against the employer for a report submitted late or in an unacceptable form.

SEC. 81. Section 26303 of the Education Code is amended to read:

26303. (a) Employers shall transmit to the plan the employee contributions and employer contributions with respect to the Cash Balance Benefit Program for salary paid to each participant during the pay period no later than 10 working days following the last day of the pay period in which the salary was earned.

(b) Payments shall be delinquent on the 11th working day thereafter, and interest shall begin to accrue at the minimum interest rate from that day until payment for the contribution report is received in full by the system. The board may collect interest for late payment from the employer under this subdivision.

SEC. 82. Section 26401.5 of the Education Code is amended to read:

26401.5. (a) A member of the Defined Benefit Program who is employed by more than one employer to perform creditable service for less than 50 percent of the full-time equivalent for the position with each employer shall not be eligible to make an election as provided in Section 26401 unless and until all employers by which the member is employed to perform creditable service provide the benefits of this part for their employees.

(b) If a member of the Defined Benefit Program who pursuant to subdivision (a) has made an election as provided in Section 26401 is subsequently employed to perform creditable service for an employer that does not provide the benefits of this part for its employees, contributions shall no longer be made to the Cash Balance Benefit Program on his or her behalf and creditable service performed for all employers shall be subject to coverage under the

Defined Benefit Program, with no subsequent right of election pursuant to Section 26401 or subdivision (a).

SEC. 83. Section 26504 of the Education Code is amended to read:

26504. The employer may enter into a collective bargaining agreement to pay a different employer contribution rate and a different employee contribution rate, provided all of the following conditions are met:

(a) The sum of the employee contributions and employer contributions for each participant shall equal or exceed 8 percent of salary.

(b) The employee contribution rate may exceed the employer contribution rate but in no event shall the employer contribution rate be less than 4 percent.

(c) The employee contribution rate and employer contribution rate shall be the same for each participant employed by the employer.

(d) The employee contribution rate and employer contribution rate shall be in one-quarter percent increments.

(e) The employee contribution rate and employer contribution rate as determined under the collective bargaining agreement shall become effective on the first day of the plan year following notification to the system and shall remain in effect for at least one plan year. However, the employee contribution rate and the employer contribution rate as determined under the collective bargaining agreement may become effective as of the first day of the plan year in which notice is given if it is so provided in the collective bargaining agreement and if a lump-sum contribution is made to the plan equal to the additional employee and employer contributions, if any, that would have been required if the contribution rates had been in effect on the first day of the plan year. Interest shall be credited at the minimum interest rate with respect to the lump-sum contribution commencing with the first month after the contribution is made.

(f) The employer has filed notice of the employee contribution rate and the employer contribution rate on a form prescribed by the system.

SEC. 84. Section 26603 of the Education Code is amended to read:

26603. All employee contributions shall be credited to employee accounts and all employer contributions shall be credited to employer accounts as of the first working day following the date all contributions to fully satisfy the contribution report as submitted by the employer are received by the system.

SEC. 85. Section 26604 of the Education Code is amended to read:

26604. (a) Beginning June 1, 1996, prior to the Cash Balance Plan becoming effective, and prior to the beginning of each plan year thereafter, the board, by plan amendment with respect to the Cash Balance Benefit Program, shall declare the minimum interest rate for

crediting employee accounts and employer accounts with respect to the Cash Balance Benefit Program during the following plan year.

(b) All interest shall be computed at the minimum interest rate on the balance of the employee account and the employer account and shall be compounded daily.

(c) Interest for contributions credited during that month to the respective account shall accrue at the minimum interest rate from the first working day following the date contributions are received in full by the system pursuant to Section 26603.

(d) Interest shall not be credited to employee accounts and employer accounts that have been transferred to the Annuitant Reserve for payment of an annuity.

SEC. 86. Section 27410 of the Education Code is amended to read:

27410. (a) The nonparticipant spouse who is awarded separate nominal accounts shall have the right to designate, pursuant to Sections 27100 to 27102, inclusive, a beneficiary or beneficiaries to receive the amounts credited to the separate nominal accounts of the nonparticipant spouse on his or her date of death, and any annuity attributable to the separate nominal accounts which is unpaid on the date of the death of the nonparticipant spouse.

(b) This section shall not be construed to provide the nonparticipant spouse with any right to elect a joint and survivor annuity pursuant to paragraphs (3) and (4) of subdivision (b) of Section 26807.

SEC. 87. Section 44494 of the Education Code is amended to read:

44494. (a) On or before September 1 of each year, participating school districts that receive funding pursuant to subdivision (a) of Section 44492 shall allocate no less than four thousand dollars ($4,000) to provide each qualified mentor with an additional annual stipend over and above the regular salary to which he or she is entitled. The amount of the annual stipend shall be four thousand dollars ($4,000) for a full school year of service as a mentor, or a pro rata share of that amount for less than a full school year of service as a mentor, except that participating school districts that receive funding pursuant to subdivision (b) of Section 44492 shall allocate the full amount so received to provide a qualified mentor with an additional annual stipend over and above the regular salary to which he or she is entitled. This stipend shall not be counted as salary or wages for purposes of calculating employer and employee contributions or employee benefits under the Defined Benefit Program of the State Teachers' Retirement Plan.

(b) A mentor may propose that the district allocate all or part of the stipend for his or her professional growth or release time.

(c) The governing board may designate certificated employees as mentor teachers pursuant to Section 44491 and pay these persons the additional annual stipend authorized under subdivision (a) for a period not to exceed three consecutive school years. Upon

completing three years as a mentor teacher, an individual may be reviewed and renominated.

(d) The subject of participation by a school district or an individual certificated classroom teacher in a mentor teacher program shall not be included within the scope of representation in collective bargaining among a public school employer and eligible employee organizations.

SEC. 88. Section 20639 of the Government Code is amended to read:

20639. The compensation earnable during any period of service as a member of the Judges' Retirement System, the Legislators' Retirement System, or the Defined Benefit Program of the State Teachers' Retirement Plan shall be considered compensation earnable as a member of this system for purposes of computing final compensation for the member, if he or she retires concurrently under both systems.

A member shall be deemed to have retired concurrently under this system and under the Defined Benefit Program of the State Teachers' Retirement Plan, if the member is enrolled as a disabled member under the Defined Benefit Program of the State Teachers' Retirement Plan and for retirement under this system on the same effective date.

SEC. 89. Section 47611 of the Education Code is amended to read:

47611. If a charter school chooses to make the State Teacher's Retirement Plan available, all employees of the charter school who perform creditable service shall be entitled to have that service covered under the plan's Defined Benefit Program or Cash Balance Benefit Program, and all provisions of Part 13 (commencing with Section 22000) and Part 14 (commencing with Section 26000) shall apply in the same manner as the provisions apply to other public schools in the school district that granted the charter.

SEC. 90. 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. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section or any other act that is enacted by the Legislature during the 1999 calendar year and takes effect on or before January 1, 2000, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

CHAPTER 940

An act to amend Sections 771, 6750, 6751, and 7500 of, and to repeal and add Sections 6752 and 6753 of, the Family Code, relating to minors.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 771 of the Family Code is amended to read:

771. (a) The earnings and accumulations of a spouse and the minor children living with, or in the custody of, the spouse, while living separate and apart from the other spouse, are the separate property of the spouse.

(b) Notwithstanding subdivision (a), the earnings and accumulations of an unemancipated minor child related to a contract of a type described in Section 6750 shall remain the sole legal property of the minor child.

SEC. 2. Section 6750 of the Family Code is amended to read:

6750. This chapter applies to the following contracts entered into between an unemancipated minor and any third party or parties on or after January 1, 2000:

(a) A contract pursuant to which a person is employed or agrees to render artistic or creative services, either directly or through a third party, including, but not limited to, a personal services corporation (loan-out company). "Artistic or creative services" includes, but is not limited to, services as an actor, actress, dancer, musician, comedian, singer, stunt-person, voice-over artist, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer.

(b) A contract pursuant to which a person agrees to purchase, or otherwise secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic properties, or use of a person's likeness, voice recording, performance, or story of or incidents in his or her life, either tangible or intangible, or any rights therein for use in motion pictures, television, the production of sound recordings in any format now known or hereafter devised, the legitimate or living stage, or otherwise in the entertainment field.

(c) A contract pursuant to which a person is employed or agrees to render services as a participant or player in a sport.

(d) Where a minor renders services as an extra, background performer, or in a similar capacity, through an agency or service that provides one or more performers for a fee (casting agency), the agency or service shall be considered the minor's employer for the purposes of this chapter.

SEC. 3. Section 6751 of the Family Code is amended to read:

6751. (a) A contract, otherwise valid, of a type described in Section 6750, entered into during minority, cannot be disaffirmed on that ground either during the minority of the person entering into the contract, or at any time thereafter, if the contract has been approved by the superior court in any county in which the minor resides or is employed or in which any party to the contract has its principal office in this state for the transaction of business.

(b) Approval of the court may be given on petition of any party to the contract, after such reasonable notice to all other parties to the contract as is fixed by the court, with opportunity to such other parties to appear and be heard.

(c) Approval of the court given under this section extends to the whole of the contract and all of its terms and provisions, including, but not limited to, any optional or conditional provisions contained in the contract for extension, prolongation, or termination of the term of the contract.

(d) For the purposes of any proceeding under this chapter, a parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor at the time of the proceeding shall be considered the minor's guardian ad litem for the proceeding, unless the court shall determine that appointment of a different individual as guardian ad litem is required in the best interests of the minor.

SEC. 4. Section 6752 of the Family Code is repealed.

SEC. 5. Section 6752 is added to the Family Code, to read:

6752. (a) A parent or guardian, as the case may be, entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in Section 6750 shall provide a certified copy of the minor's birth certificate indicating the minor's minority to the other party or parties to the contract and in addition, in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian.

(b) (1) Notwithstanding any other statute, in an order approving a minor's contract of a type described in Section 6750, the court shall require that 15 percent of the minor's gross earnings pursuant to the contract be set aside by the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with Section 6753. The court may also require that more than 15 percent of the minor's gross earnings be set aside in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with Section 6753, upon request of the minor's parent or legal guardian, or the minor, through his or her guardian ad litem.

(2) The court shall require that at least one parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor at the time the order is issued be appointed as trustee of the funds ordered to be set aside in trust for the benefit

of the minor, unless the court shall determine that appointment of a different individual, individuals, entity, or entities as trustee or trustees is required in the best interest of the minor.

(3) The trustee or trustees of the funds ordered to be set aside in trust shall promptly provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to subdivision (c) of Section 6753.

(4) The minor's employer shall deposit or disburse the funds as required by the order within 15 business days of receiving the order and receiving the trustee's statement pursuant to Section 6753. Notwithstanding any other statute, pending receipt of the trustee's statement, the minor's employer shall hold for the benefit of the minor the percentage ordered by the court of the minor's gross earnings pursuant to the contract.

(5) When making the initial deposit of funds pursuant to the order, the minor's employer shall provide the financial institution with a copy of the order.

(6) Once the minor's employer deposits the set aside funds pursuant to Section 6753, in trust, in an account or other savings plan, the minor's employer shall have no further obligation or duty to monitor or account for the funds. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to monitor and account for those funds once they have been deposited by the minor's employer. The trustee or trustees shall do an annual accounting of the funds held in trust, in an account or other savings plan, in accordance with Sections 16062 and 16063 of the Probate Code.

(7) The court shall have continuing jurisdiction over the trust established pursuant to the order and may at any time, upon petition of the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees, on good cause shown, order that the trust be amended or terminated, notwithstanding the provisions of the declaration of trust. An order amending or terminating a trust may be made only after reasonable notice to the beneficiary, to the parent or guardian, if any, and to the trustee or trustees of the funds if the beneficiary is then a minor, with opportunity for all parties to appear and be heard.

(8) The trustee or trustees of the funds ordered to be set aside shall promptly notify the minor's employer in writing of any change in facts that affect the employer's obligation or ability to set aside the funds in accordance with the order, including, but not limited to, a change of financial institution or account number, or the existence of a new or amended order issued pursuant to paragraph (7) amending or terminating the employer's obligations under the original order. The written notification shall include the information set forth in paragraph (3) and shall be accompanied by a true and accurate photocopy of the new or amended order.

(c) (1) Notwithstanding any other statute, for any minor's contract of a type described in Section 6750 that is not being submitted for approval by the court pursuant to Section 6751, or for which the court has issued a final order denying approval, 15 percent of the minor's gross earnings pursuant to the contract shall be set aside by the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with Section 6753. At least one parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor, shall be the trustee of the funds set aside for the benefit of the minor, unless the court, upon petition by the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees of the trust, shall determine that appointment of a different individual, individuals, entity, or entities as trustee or trustees is required in the best interest of the minor.

(2) A parent or guardian, as the case may be, entitled to the physical custody, care, and control of the minor shall promptly provide the minor's employer with a true and accurate photocopy of the trustee's statement pursuant to subdivision (c) of Section 6753 and in addition, in the case of a guardian, a certified copy of the court document appointing the person as the minor's legal guardian.

(3) The minor's employer shall deposit 15 percent of the minor's gross earnings pursuant to the contract within 15 business days of receiving the trustee's statement pursuant to subdivision (c) of Section 6753, or if the court denies approval of the contract, within 15 business days of receiving a final order denying approval of the contract. Notwithstanding any other statute, pending receipt of the trustee's statement or the final court order, the minor's employer shall hold for the benefit of the minor the 15 percent of the minor's gross earnings pursuant to the contract.

(4) Once the minor's employer deposits the set aside funds in trust, in an account or other savings plan pursuant to Section 6753, the minor's employer shall have no further obligation or duty to monitor or account for the funds. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to monitor and account for those funds once they have been deposited by the minor's employer. The trustee or trustees shall do an annual accounting of the funds held in trust, in an account or other savings plan, in accordance with Sections 16062 and 16063 of the Probate Code.

(5) Upon petition of the parent or legal guardian, the minor, through his or her guardian ad litem, or the trustee or trustees of the trust, to the superior court in any county in which the minor resides or in which the trust is established, the court may at any time, on good cause shown, order that the trust be amended or terminated, notwithstanding the provisions of the declaration of trust. An order amending or terminating a trust may be made only after reasonable notice to the beneficiary, to the parent or guardian, if any, and to the

trustee or trustees of the funds if the beneficiary is then a minor, with opportunity for all parties to appear and be heard.

(6) A parent or guardian, as the case may be, entitled to the physical custody, care, and control of the minor shall promptly notify the minor's employer in writing of any change in facts that affect the employer's obligation or ability to set aside funds for the benefit of the minor in accordance with this section, including, but not limited to, a change of financial institution or account number, or the existence of a new or amended order issued pursuant to paragraph (5) amending or terminating the employer's obligations under this section. The written notification shall be accompanied by a true and accurate photocopy of the trustee's statement and attachments pursuant to subdivision (c) of Section 6753, or a true and accurate photocopy of the new or amended order.

(d) Where a parent or guardian, as the case may be, is entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in Section 6750, the relationship between the parent or guardian, as the case may be, and the minor is a fiduciary relationship that is governed by the law of trusts, whether or not a court has issued a formal order to that effect. The parent or guardian, as the case may be, acting in his or her fiduciary relationship, shall, with the earnings and accumulations of the minor under the contract, pay all liabilities incurred by the minor under the contract, including, but not limited to, payments for taxes on all earnings, including taxes on the amounts set aside under subdivisions (b) and (c) of this section, and payments for personal or professional services rendered to the minor or the business related to the contract. Nothing in this subdivision shall be construed to alter any other existing responsibilities of a parent or legal guardian to provide for the support of a minor child.

(e) With respect to contracts pursuant to which a person is employed to render services as a musician, singer, songwriter, musical producer, or arranger only, "gross earnings" for purposes of this chapter means the amount paid directly to the minor pursuant to the contract, including the payment of any advances to the minor pursuant to the contract, but excluding deductions to offset those advances or other expenses incurred by the employer pursuant to the contract.

SEC. 6. Section 6753 of the Family Code is repealed.

SEC. 7. Section 6753 is added to the Family Code, to read:

6753. (a) The trustee or trustees shall establish a trust pursuant to this section at a bank, savings and loan institution, credit union, brokerage firm, or company registered under the Investment Company Act of 1940, unless a similar trust has been previously established, for the purpose of preserving for the benefit of the minor the portion of the minor's gross earnings pursuant to paragraph (1) of subdivision (b) of Section 6752 or pursuant to paragraph (1) of subdivision (c) of Section 6752. The trustee or trustees shall establish

the trust pursuant to this section within seven business days after the minor's contract is signed by the minor and the employer.

(b) Except as otherwise provided in this section, prior to the date on which the beneficiary of the trust attains the age of 18 years or the issuance of a declaration of emancipation of the minor under Section 7122, no withdrawal by the beneficiary or any other individual, individuals, entity, or entities may be made of funds on deposit in trust without written order of the superior court pursuant to paragraph (7) of subdivision (b) or paragraph (5) of subdivision (c) of Section 6752. Upon reaching the age of 18 years, the beneficiary may withdraw the funds on deposit in trust only after providing a certified copy of the beneficiary's birth certificate to the financial institution where the trust is located.

(c) The trustee or trustees shall, within 10 business days after the minor's contract is signed by the minor and the employer, prepare a written statement under penalty of perjury that shall include the name, address, and telephone number of the financial institution, the name of the account, the number of the account, the name of the minor beneficiary, the name of the trustee or trustees of the account, and any additional information needed by the minor's employer to deposit into the account the portion of the minor's gross earnings prescribed by paragraph (1) of subdivision (b) or paragraph (1) of subdivision (c) of Section 6752. The trustee or trustees shall attach to the written statement a true and accurate photocopy of any information received from the financial institution confirming the creation of the account, such as an account agreement, account terms, passbook, or other similar writings.

(d) If the trust is established in the United States, it shall be established either with a financial institution that is and remains insured at all times by the Federal Deposit Insurance Corporation (FDIC), the Securities Investor Protection Corporation (SIPC), or the National Credit Union Share Insurance Fund (NCUSIF) or their respective successors, or with a company that is and remains registered under the Investment Company Act of 1940. If the trust is established outside the United States, the financial institution shall be a first-class international bank. The trustee or trustees of the trust shall be the only individual, individuals, entity, or entities with the obligation or duty to ensure that the funds remain in trust, in an account or other savings plan, in a financial institution insured in accordance with this section, or with a company that is and remains registered under the Investment Company Act of 1940 as authorized by this section.

(e) Upon application by the trustee or trustees to the financial institution or company where the trust is held, the trust funds may be handled by the trustee or trustees in any of the following methods:

(1) The trustee or trustees may transfer funds to another account or other savings plan at the same financial institution or company,

provided that the funds transferred shall continue to be held in trust, and subject to this section.

(2) The trustee or trustees may transfer funds to another financial institution or company, provided that the funds transferred shall continue to be held in trust, and subject to this chapter and that the trustee or trustees have provided written notification to the financial institution or company to which the funds will be transferred that the funds are subject to this section and written notice of the requirements of this chapter.

(3) The trustee or trustees may use all or a part of the funds to purchase, in the name of and for the benefit of the minor, (A) investment funds offered by a company registered under the Investment Company Act of 1940, provided that if the underlying investments are equity securities, the investment fund is a broad-based index fund or invests broadly across the domestic or a foreign regional economy, is not a sector fund, and has assets under management of at least two hundred fifty million dollars ($250,000,000); or (B) government securities and bonds, certificates of deposit, money market instruments, money market accounts, or mutual funds investing solely in those government securities and bonds, certificates, instruments, and accounts, that are available at the financial institution where the trust fund or other savings plan is held, provided that the funds remain in trust at a financial institution insured by the FDIC, SIPC, or NCUSIF if within the United States or maintained in a first-class international bank if not within the United States; provided that those purchases have a maturity date on or before the date upon which the minor will attain the age of 18 years, and provided further that any proceeds accruing from those purchases be redeposited into that account or accounts or used to further purchase any of those or similar securities, bonds, certificates, instruments, funds, or accounts.

SEC. 8. Section 7500 of the Family Code is amended to read:

7500. (a) The mother of an unemancipated minor child, and the father, if presumed to be the father under Section 7611, are equally entitled to the services and earnings of the child.

(b) If one parent is dead, is unable or refuses to take custody, or has abandoned the child, the other parent is entitled to the services and earnings of the child.

(c) This section shall not apply to any services or earnings of an unemancipated minor child related to a contract of a type described in Section 6750.

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 941

An act to amend Section 25205.9 of the Health and Safety Code, to amend Section 42886 of, and to add Section 42886.1 to, the Public Resources Code, and to amend Sections 63.1, 66, 75.51, 402.9, 531.2, 531.8, 602, 1622.6, 1624, 1624.05, 2512, 2610.5, 2613, 2910.1, 3437, 3692, 4222.5, 4837.5, 4985, 8877, 30103.5, 30188, 30436, 38631, 43010.1, 43011.1, and 50159 of, to add Sections 69.4, 168.5, 237, 1612.5, 1612.7, 1624.3, 1636.2, and 1636.5, and to repeal Section 3440 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 25205.9 of the Health and Safety Code is amended to read:

25205.9. (a) On or before June 30 of each year, the department shall determine if there are surplus funds in the Hazardous Waste Control Account and shall, upon appropriation by the Legislature, allocate these surplus funds to pay refunds in the following order of priority:

(1) To pay refunds to generators pursuant to subdivision (c).

(2) To pay refunds to generators pursuant to subdivision (d). However, the department shall not pay refunds pursuant to subdivision (d) until all applications for refunds pursuant to subdivision (c) have first been paid.

(b) The department shall certify the amount of the surplus in the Hazardous Waste Control Account to the board and shall direct the board to pay refunds to generators pursuant to subdivisions (c) and (d) to the extent funds permit. If funds are not sufficient to pay all the refunds for which the board receives applications pursuant to subdivision (h) of Section 25205.5, the department shall direct the board to pay refunds pursuant to subdivision (c) on a pro rata basis. If funds are sufficient to pay all refunds for which applications are received pursuant to subdivision (h) of Section 25205.5 but not sufficient to pay all refunds for which applications were received by the board pursuant to subdivision (i) of Section 25205.5, the department shall direct the board to pay refunds pursuant to subdivision (d) on a pro rata basis.

(c) (1) If the department certifies that there are sufficient funds to do so, the board shall issue refunds, in the manner directed by the department pursuant to subdivision (b), to hazardous waste

generators who are eligible for refunds pursuant to paragraph (1) of subdivision (h) of Section 25205.5.

(2) The refund made to a generator pursuant to this subdivision shall not exceed the fee paid by the generator pursuant to Section 25205.5, or exceed the hazardous waste generator inspection fee paid to the certified unified program agency for the previous calendar year, whichever is less.

(3) The board may issue refunds pursuant to this section only if the department certifies, pursuant to subdivision (b), that funds for these refunds are available.

(d) (1) If the department certifies that there are sufficient funds to do so, the board shall issue refunds, in the manner directed by the department pursuant to subdivision (b), to hazardous waste generators who are eligible for refunds pursuant to paragraph (1) of subdivision (i) of Section 25205.5.

(2) The refund made to a generator pursuant to this subdivision shall be equal to the difference between the amount of the generator fee paid by the generator pursuant to Section 25205.5 and the amount the generator would have paid if the amount of hazardous materials transferred to an offsite facility for recycling had been deducted from the total tonnage of hazardous waste generated at the generator's site. However, if a generator receives a refund pursuant to subdivision (c), the generator may not receive a refund pursuant to this subdivision that exceeds the difference between the amount of the generator fee paid pursuant to Section 25205.5 and the amount of the refund received pursuant to subdivision (c).

(3) The board may issue refunds pursuant to this subdivision only if the department certifies, pursuant to subdivision (b), that funds for these refunds are available.

(e) For purposes of this section, "surplus" means the amount in the Hazardous Waste Control Account on June 30 of each year that is in excess of the reserve required by subdivision (k) of Section 25174.

SEC. 2. Section 42886 of the Public Resources Code is amended to read:

42886. (a) The fees remitted pursuant to Section 42885 are due and payable quarterly on or before the 15th day of the month following each quarterly or yearly reporting period.

(b) A penalty of 20 percent of any fees not paid when due shall be assessed and collected.

SEC. 3. Section 42886.1 is added to the Public Resources Code, to read:

42886.1. (a) The board if it deems it necessary in order to ensure payment to or facilitate the collection by the state of the amount of fees, may require returns and payment of the amount of fees for a yearly period.

(b) On or before the 15th day of the month following each designated yearly period, a return for the preceding designated

yearly period shall be filed with the board in the form as the board may prescribe.

SEC. 4. Section 63.1 of the Revenue and Taxation Code is amended to read:

63.1. (a) Notwithstanding any other provision of this chapter, a change in ownership shall not include the following purchases or transfers for which a claim is filed pursuant to this section:

(1) The purchase or transfer of real property which is the principal residence of an eligible transferor in the case of a purchase or transfer between parents and their children.

(2) The purchase or transfer of the first one million dollars ($1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.

(3) (A) Subject to subparagraph (B), the purchase or transfer of real property described in paragraphs (1) and (2) of subdivision (a) occurring on or after March 27, 1996, between grandparents and their grandchild or grandchildren, if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of purchase or transfer.

(B) A purchase or transfer of a principal residence shall not be excluded pursuant to subparagraph (A) if the transferee grandchild or grandchildren also received a principal residence, or interest therein, through another purchase or transfer that was excludable pursuant to paragraph (1) of subdivision (a). The full cash value of any real property, other than a principal residence, that was transferred to the grandchild or grandchildren pursuant to a purchase or transfer that was excludable pursuant to paragraph (2) of subdivision (a) and the full cash value of a principal residence that fails to qualify for exclusion as a result of the preceding sentence shall be included in applying, for purposes of paragraph (2) of subdivision (a), the one million dollar ($1,000,000) full cash value limit specified in paragraph (2) of subdivision (a).

(b) (1) For purposes of paragraph (1) of subdivision (a), "principal residence" means a dwelling for which a homeowners' exemption or a disabled veterans' residence exemption has been granted in the name of the eligible transferor. "Principal residence" includes only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence.

(2) For purposes of paragraph (2) of subdivision (a), the one million dollar ($1,000,000) exclusion shall apply separately to each eligible transferor with respect to all purchases by and transfers to eligible transferees on and after November 6, 1986, of real property, other than the principal residence, of that eligible transferor. The exclusion shall not apply to any property in which the eligible transferor's interest was received through a transfer, or transfers, excluded from change in ownership by the provisions of either

subdivision (f) of Section 62 or subdivision (b) of Section 65, unless the transferor qualifies as an original transferor under subdivision (b) of Section 65. In the case of any purchase or transfer subject to this paragraph involving two or more eligible transferors, the transferors may elect to combine their separate one million dollar ($1,000,000) exclusions and, upon making that election, the combined amount of their separate exclusions shall apply to any property jointly sold or transferred by the electing transferors, provided that in no case shall the amount of full cash value of real property of any one eligible transferor excluded under this election exceed the amount of the transferor's separate unused exclusion on the date of the joint sale or transfer.

(c) As used in this section:

(1) "Purchase or transfer between parents and their children" means either a transfer from a parent or parents to a child or children of the parent or parents or a transfer from a child or children to a parent or parents of the child or children. For purposes of this section, the date of any transfer between parents and their children under a will or intestate succession shall be the date of the decedent's death, if the decedent died on or after November 6, 1986.

(2) "Purchase or transfer of real property between grandparents and their grandchild or grandchildren" means a purchase or transfer on or after March 27, 1996, from a grandparent or grandparents to a grandchild or grandchildren if all of the parents of that grandchild or those grandchildren who qualify as the children of the grandparents are deceased as of the date of the transfer. For purposes of this section, the date of any transfer between grandparents and their grandchildren under a will or by intestate succession shall be the date of the decedent's death.

(3) "Children" means any of the following:

(A) Any child born of the parent or parents, except a child, as defined in subparagraph (D), who has been adopted by another person or persons.

(B) Any stepchild of the parent or parents and the spouse of that stepchild while the relationship of stepparent and stepchild exists. For purposes of this paragraph, the relationship of stepparent and stepchild shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving stepparent.

(C) Any son-in-law or daughter-in-law of the parent or parents. For the purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law.

(D) Any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years.

(4) "Grandchild" or "grandchildren" means any child or children of the child or children of the grandparent or grandparents.

(5) "Full cash value" means full cash value, as defined in Section 2 of Article XIII A of the California Constitution and Section 110.1, with any adjustments authorized by those sections, and the full value of any new construction in progress, determined as of the date immediately prior to the date of a purchase by or transfer to an eligible transferee of real property subject to this section.

(6) "Eligible transferor" means a grandparent, parent, or child of an eligible transferee.

(7) "Eligible transferee" means a parent, child, or grandchild of an eligible transferor.

(8) "Real property" means real property as defined in Section 104. Real property does not include any interest in a legal entity.

(9) "Transfer" includes, and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

(10) "Social security number" also includes a taxpayer identification number issued by the Internal Revenue Service in the case in which the taxpayer is a foreign national who cannot obtain a social security number.

(d) (1) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate files a claim with the assessor for the exclusion sought and furnishes to the assessor each of the following:

(A) A written certification by the transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate made under penalty of perjury that the transferee is a grandparent, parent, child, or grandchild of the transferor. In the case of a grandparent-grandchild transfer, the written certification shall also include a certification that all the parents of the grandchild or grandchildren who qualify as children of the grandparents were deceased as of the date of the purchase or transfer and that the grandchild or grandchildren did or did not receive a principal residence excludable under paragraph (1) of subdivision (a) from the deceased parents, and that the grandchild or grandchildren did or did not receive real property other than a principal residence excludable under paragraph (2) of subdivision (a) from the deceased parents. The claimant shall provide legal substantiation of any matter certified pursuant to this subparagraph at the request of the county assessor.

(B) A copy of a written certification by the transferor, the transferor's legal representative, or the executor or administrator of

the transferor's estate made under penalty of perjury that the transferor is a grandparent, parent, or child of the transferee. The written certification shall also include either or both of the following:

(i) If the purchase or transfer of real property includes the purchase or transfer of residential real property, a certification that the residential real property is or is not the transferor's principal residence.

(ii) If the purchase or transfer of real property includes the purchase or transfer of real property other than the transferor's principal residence, a certification that other real property of the transferor that is subject to this section has or has not been previously sold or transferred to an eligible transferee, the total amount of full cash value, as defined in subdivision (c), of any real property subject to this section that has been previously sold or transferred by that transferor to eligible transferees, the location of that real property, the social security number of each eligible transferor, and the names of the eligible transferees of that property.

(2) If the full cash value of the real property purchased by or transferred to the transferee exceeds the permissible exclusion of the transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into account any previous purchases by or transfers to an eligible transferee from the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking. Within any appraisal unit, as determined in accordance with subdivision (d) of Section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis, however, and shall not be applied to a selected portion or portions of the appraisal unit.

(e) (1) The State Board of Equalization shall design the form for claiming eligibility. Except as provided in paragraph (2), any claim under this section shall be filed:

(A) For transfers of real property between parents and their children occurring prior to September 30, 1990, within three years after the date of the purchase or transfer of real property for which the claim is filed.

(B) For transfers of real property between parents and their children occurring on or after September 30, 1990, and for the purchase or transfer of real property between grandparents and their grandchildren occurring on or after March 27, 1996, within three years after the date of the purchase or transfer of real property for which the claim is filed, or prior to transfer of the real property to a third party, whichever is earlier.

(C) Notwithstanding subparagraphs (A) and (B), a claim shall be deemed to be timely filed if it is filed within six months after the date of mailing of a notice of supplemental or escape assessment, issued

as a result of the purchase or transfer of real property for which the claim is filed.

(2) In the case in which the real property subject to purchase or transfer has not been transferred to a third party, a claim for exclusion under this section that is filed subsequent to the expiration of the filing periods set forth in paragraph (1) shall be considered by the assessor, subject to all of the following conditions:

(A) Any exclusion granted pursuant to that claim shall apply commencing with the lien date of the assessment year in which the claim is filed.

(B) Under any exclusion granted pursuant to that claim, the adjusted full cash value of the subject real property in the assessment year described in subparagraph (A) shall be the adjusted base year value of the subject real property in the assessment year in which the excluded purchase or transfer took place, factored to the assessment year described in subparagraph (A) for both of the following:

(i) Inflation as annually determined in accordance with paragraph (1) of subdivision (a) of Section 51.

(ii) Any subsequent new construction occurring with respect to the subject real property.

(3) (A) Unless otherwise expressly provided, the provisions of this subdivision shall apply to any purchase or transfer of real property that occurred on or after November 6, 1986.

(B) Paragraph (2) shall apply to purchases or transfers between parents and their children that occurred on or after November 6, 1986, and to purchases or transfers between grandparents and their grandchildren that occurred on or after March 27, 1996.

(4) For purposes of this subdivision, a transfer of real property to a parent or child of the transferor shall not be considered a transfer to a third party.

(f) The assessor shall report quarterly to the State Board of Equalization all purchases or transfers, other than purchases or transfers involving a principal residence, for which a claim for exclusion is made pursuant to subdivision (d). Each report shall contain the assessor's parcel number for each parcel for which the exclusion is claimed, the amount of each exclusion claimed, the social security number of each eligible transferor, and any other information the board shall require in order to monitor the one million dollar ($1,000,000) limitation in paragraph (2) of subdivision (a).

(g) This section shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree. Nothing in this subdivision shall be construed as conflicting with paragraph (1) of subdivision (c) or the general principle that transfers by reason of death occur at the time of death.

(h) (1) Except as provided in paragraph (2), this section shall apply to purchases and transfers of real property completed on or after November 6, 1986, and shall not be effective for any change in

ownership, including a change in ownership arising on the date of a decedent's death, that occurred prior to that date.

(2) This section shall apply to purchases or transfers of real property between grandparents and their grandchildren occurring on or after March 27, 1996, and, with respect to purchases or transfers of real property between grandparents and their grandchildren, shall not be effective for any change in ownership, including a change in ownership arising on the date of a decedent's death, that occurred prior to that date.

SEC. 5. Section 66 of the Revenue and Taxation Code is amended to read:

66. Change in ownership does not include any of the following:

(a) The creation, vesting, transfer, distribution, or termination of a participant's or beneficiary's interest in an employee benefit plan.

(b) Any contribution of real property to an employee benefit plan.

(c) Any acquisition by an employee benefit plan of the stock of the employer corporation pursuant to which the employee benefit plan obtains direct or indirect ownership or control of more than 50 percent of the voting stock of the employer corporation.

As used in this section, the terms "employer," "employee benefit plan," "participant," and "beneficiary" shall be defined as they are defined in the Employee Retirement Income Security Act of 1974.

SEC. 6. Section 69.4 is added to the Revenue and Taxation Code, to read:

69.4. (a) Notwithstanding any other provision of law, pursuant to the authority of subdivision (i) of Section 2 of Article XIII A of the California Constitution, the base year value of qualified contaminated property may be transferred to a replacement property that is acquired or newly constructed as a replacement for the contaminated property, pursuant to subparagraph (A) of paragraph 1 of that subdivision, or if the remediation of the contamination requires the repair or replacement of contaminated property, that repair or replacement shall not be considered "new construction," pursuant to subparagraph (B) of that subdivision.

(b) The base year value of the original property shall be the base year value of the original property as determined in accordance with Section 110.1, with the inflation factor adjustments permitted by subdivision (f) of Section 110.1. The base year value of the original property shall also include any inflation factor adjustments permitted by subdivision (f) of Section 110.1 up to the date the replacement property is acquired or newly constructed, regardless of whether the claimant continued to own the original property during this entire period. The base year or years used to compute the base year value of the original property shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

SEC. 7. Section 75.51 of the Revenue and Taxation Code is amended to read:

75.51. The tax collector shall mail or electronically transmit a supplemental tax bill to the assessee, including the following information either on the bill or in a separate statement accompanying the bill:

(a) The information supplied by the assessor to the auditor pursuant to Section 75.40.

(b) The amount of the supplemental taxes due.

(c) The date the notice is mailed.

(d) The date on which the taxes will become delinquent and the penalties for delinquency.

(e) A statement that the supplemental taxes were determined in accordance with Article XIII A of the California Constitution which generally requires reappraisal of property whenever a change in ownership occurs or property is newly constructed.

(f) The tax rates or the dollar amounts of taxes levied by each revenue district and taxing agency on the property covered by the tax bill.

(g) All of the following:

(1) Information specifying that if the taxpayer disagrees with a change in the assessed value as shown on the tax bill, the taxpayer has the right to an informal assessment review by contacting the assessor's office.

(2) (A) Except as provided in subparagraph (B), information specifying that if the taxpayer and the assessor are unable to agree on proper assessed value pursuant to an informal assessment review, the taxpayer has the right to file an application for reduction in assessment for the following year with the county board of equalization or the assessment appeals board, as applicable, during the period from July 2 to September 15, inclusive.

(B) For counties in which the board of supervisors has adopted the provisions of subdivision (c) of Section 1605, information advising that the assessee has a right to appeal the supplemental assessment, and that the appeal is required to be filed within 60 days of the date of the mailing or electronic transmittal of the tax bill. For the purposes of equalization proceedings, the supplemental assessment shall be considered an assessment made outside of the regular assessment period as provided in Section 1605.

(3) The address of the clerk of the county board of equalization or the assessment appeals board, as applicable, at which forms for an application for reduction may be obtained.

SEC. 8. Section 168.5 is added to the Revenue and Taxation Code, to read:

168.5. Any document required in this division to be acknowledged by the county clerk at no charge may be acknowledged by a notary public or other county official pursuant to Section 1181 of the Civil Code, at no charge.

SEC. 9. Section 237 is added to the Revenue and Taxation Code, to read:

237. (a) Property owned and operated by a federally designated Indian tribe or its tribally designated housing entity is not subject to taxation under this part if the property and entity meet the following requirements:

(1) The property is used exclusively and solely for the charitable purpose of providing rental housing and related facilities for tenants who are persons of low income (as defined in Section 50093 of the Health and Safety Code).

(2) The housing entity is nonprofit.

(3) No part of the net earnings of the housing entity inure to the benefit of any private shareholder or individual.

(b) In lieu of the tax imposed by this part, a tribe or tribally designated housing entity may agree to make payments to a county, city, city and county, or political subdivision of the state for providing services, improvements, or facilities by that entity for the benefit of a low-income housing project owned and operated by the tribe or tribally designated housing entity. Any payments in lieu of tax may not exceed the estimated cost to the city, county, city and county, or political subdivision of the state of the services, improvements, or facilities to be provided.

(c) A tribe or tribally designated housing entity applying for an exemption under this section shall provide the following documents to the assessor:

(1) Documents establishing that the designating tribe is federally recognized.

(2) Documents establishing that the housing entity has been designed by the tribe.

(3) Documents establishing that there is a deed restriction, agreement, or other legally binding document restricting the property's use to low-income housing and that provides that the property's housing units are continuously available to or occupied by persons who are low income, as defined by Section 50093 of the Health and Safety Code, at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflict with that section, rents that do not exceed those prescribed by the terms of the financing agreements or financial assistance agreements.

SEC. 10. Section 402.9 of the Revenue and Taxation Code is amended to read:

402.9. In valuing property for persons of low and moderate income that is financed under Section 236 or Section 515 of the federal National Housing Act, since federal restrictions accompanying these programs substantially affect actual income and expenses of the property owner, the assessor shall not consider as income any interest subsidy payments made to a lender on that property by the federal government.

SEC. 11. Section 531.2 of the Revenue and Taxation Code is amended to read:

531.2. (a) When the property is real property which subsequent to July 1 of the year of escape for purposes of this article, or subsequent to July 1 of the year in which the property should have been lawfully assessed, for purposes of Article 3 (commencing with Section 501), but prior to the date of that assessment and the showing thereof on the secured roll, with the date of entry specified thereon, has (1) been transferred or conveyed to a bona fide purchaser for value, or (2) become subject to a lien of a bona fide encumbrance for value, the escape assessment pursuant to either of these articles shall not create or impose a lien or charge on that real property, but shall be entered on the unsecured roll in the name of the person who would have been the assessee in the year in which it escaped assessment and shall thereafter be treated and collected like other taxes on that roll. The tax rate applicable shall be the secured tax rate of the year in which the property escaped assessment.

(b) If the real property escaped assessment as a result of an unrecorded change in ownership or change in control for which a change in ownership statement required by Section 480, 480.1, or 480.2, or a preliminary change in ownership report, pursuant to Section 480.3, is not filed, the assessor shall appraise the property as of the date of transfer and enroll the difference in taxable value for each of the subsequent years on the secured roll, with the date of entry specified thereon. However, if prior to the date of the assessment the property has (1) been transferred or conveyed to a bona fide purchaser for value, or (2) become subject to a lien of a bona fide encumbrance for value, the escape assessment pursuant to this paragraph shall not create or impose a lien or charge on that real property, but shall be entered on the unsecured roll in the name of the person who would have been the assessee in the year in which it escaped assessment and shall thereafter be treated and collected like other taxes on that roll. The tax rate applicable shall be the secured rate of the year in which the property escaped assessment. "Assessment year" means the period defined in Section 118.

In the event of a failure to file a change in ownership statement required by Section 480, 480.1, or 480.2, or a preliminary change in ownership report, pursuant to Section 480.3, the interest provided in Section 506 may, by the order of the board of supervisors, be added.

(c) (1) Taxes resulting from escape assessments shall be prorated pursuant to paragraphs (2) to (5), inclusive, only if the board of supervisors of a county has adopted a resolution specifying that taxes shall be prorated pursuant to this subdivision.

(2) When real property has been transferred or conveyed to a bona fide purchaser for value subsequent to July 1 of the year of escape for purposes of this article, or subsequent to July 1 of the year in which the property should have been lawfully assessed, for purposes of Article 3 (commencing with Section 501), taxes resulting

from escape assessments pursuant to this section shall be prorated between the following:

(A) The person who would have been the assessee if the change in ownership had not occurred.

(B) The person who purchased the property.

(3) If the real property has been transferred or conveyed to a bona fide purchaser for value more than once during the year of escape or assessment, each owner of record during that period shall be liable for a pro rata share of taxes based on the length of time during that period each bona fide purchaser was the record owner of that real property.

(4) When the assessor has identified the fact and amount of the escape assessment, the assessor shall identify the owners of record during the year of escape or assessment and the dates of ownership for each owner.

(5) The auditor shall compute the respective prorated shares of taxes for each owner of record. The share of taxes of the current owner of the real property shall be placed on the secured roll as a lien on the parcel for which the escaped assessment was discovered. The share of taxes of any previous owner during the year of escape or assessment shall be entered on the unsecured roll.

SEC. 12. Section 531.8 of the Revenue and Taxation Code is amended to read:

531.8. No escape assessment shall be enrolled under this article before 10 days after the assessor has mailed or otherwise delivered to the affected taxpayer a "Notice of Proposed Escape Assessment" with respect to one or more specified tax years. The notice shall prominently display on its face the following heading:

"NOTICE OF PROPOSED ESCAPE ASSESSMENT"

The notice shall contain all of the following:

(a) The amount of the proposed escape assessments for each tax year at issue.

(b) The name and telephone number of a person at the assessor's office who is knowledgeable with respect to the proposed escape assessment or assessments and may be contacted with any questions with respect to the proposed assessment or assessments.

SEC. 13. Section 602 of the Revenue and Taxation Code is amended to read:

602. This local roll shall show:

(a) The name and address, if known, of the assessee. The assessor is not required to maintain electronic mail addresses.

(b) Land, by legal description.

(c) A description of possessory interests sufficient to identify them.

(d) Personal property. A failure to enumerate personal property in detail does not invalidate the assessment.

(e) The assessed value of real estate, except improvements.

(f) The assessed value of improvements on the real estate.

(g) The assessed value of improvements assessed to any person other than the owner of the land.

(h) The assessed value of possessory interests.

(i) The assessed value of personal property, other than intangibles.

(j) The revenue district in which each piece of property assessed is situated.

(k) The total taxable value of all property assessed, exclusive of intangibles.

(*l*) Any other things required by the board.

SEC. 14. Section 1612.5 is added to the Revenue and Taxation Code, to read:

1612.5. No current employee of the office of the clerk of the county board of equalization or assessment appeals board may represent an applicant for compensation on any application for equalization filed pursuant to Section 1603.

SEC. 15. Section 1612.7 is added to the Revenue and Taxation Code, to read:

1612.7. An employee of the clerk of the assessment appeals board shall notify the clerk immediately upon filing an application on his or her own behalf, or upon his or her decision to represent his or her spouse, parent, or child in an assessment appeal. The application shall be heard in accordance with the provisions of Section 1622.6.

SEC. 16. Section 1622.6 of the Revenue and Taxation Code is amended to read:

1622.6. An application for equalization filed pursuant to Section 1603 by a member or alternate member of an assessment appeals board, or an application in which that member represents his or her spouse, parent, or child, shall be heard before an assessment appeals board panel consisting of three special alternate assessment appeals board members appointed by order of the presiding judge of the superior court in the county in which the application is filed.

A member or alternate member of an assessment appeals board shall notify the clerk immediately upon filing an application on his or her own behalf, or upon his or her decision to represent his or her spouse, parent, or child in an assessment appeal matter. A special alternate assessment appeals board member may hear only the application or applications for equalization set forth in the superior court order appointing the member.

Any person shall be eligible for appointment as a special alternate assessment appeals board member who meets the qualifications set forth in Section 1624.

Sections 1624.1 and 1624.2 shall be applicable to the appointment of a special assessment appeals board member.

SEC. 17. Section 1624 of the Revenue and Taxation Code is amended to read:

1624. (a) A person shall not be eligible for nomination for membership on an assessment appeals board unless he or she has a minimum of five years' professional experience in this state as one of the following: certified public accountant or public accountant, licensed real estate broker, attorney, property appraiser accredited by a nationally recognized professional organization, property appraiser certified by the Office of Real Estate Appraisers, or is a person who the nominating member of the board of supervisors has reason to believe is possessed of competent knowledge of property appraisal and taxation.

(b) This section shall become operative on January 1, 1996.

SEC. 18. Section 1624.05 of the Revenue and Taxation Code is amended to read:

1624.05. (a) A person shall not be eligible for nomination for membership on an assessment appeals board unless he or she has a minimum of five years' professional experience in this state as one of the following: certified public accountant or public accountant, licensed real estate broker, attorney, or property appraiser accredited by a nationally recognized professional organization, or property appraiser certified by the Office of Real Estate Appraisers.

(b) This section shall apply only to an assessment appeals board in a county with a population of 1,000,000 or more.

(c) County population estimates conducted by the Department of Finance pursuant to Section 13073.5 of the Government Code shall be used in determining the population of a county for purposes of this section.

SEC. 19. Section 1624.3 is added to the Revenue and Taxation Code, to read:

1624.3. No current member of an assessment appeals board, nor any alternate member, may represent an applicant for compensation on any application for equalization filed pursuant to Section 1603 in the county in which the board member or alternate member serves.

SEC. 20. Section 1636.2 is added to the Revenue and Taxation Code, to read:

1636.2. No current hearing officer may represent an applicant for compensation on any application for equalization filed pursuant to Section 1603 in the county in which the hearing officer serves.

SEC. 21. Section 1636.5 is added to the Revenue and Taxation Code, to read:

1636.5. (a) An assessment hearing officer shall notify the clerk immediately upon filing an application on his or her own behalf, or upon his or her decision to represent his or her spouse, parent, or child in an assessment appeal.

(b) When the application described in subdivision (a) is scheduled for hearing, the clerk shall schedule the matter before an alternate assessment appeals board pursuant to the provisions of Section 1622.6.

SEC. 22. Section 2512 of the Revenue and Taxation Code is amended to read:

2512. If a remittance to cover a payment required by law to be made to a taxing agency prior to a specified date and hour is (a) deposited in the United States mail in a sealed envelope, properly addressed with the required postage prepaid, or (b) deposited for shipment with an independent delivery service that is an Internal Revenue Service designated delivery service or has been approved by the tax collector in a sealed envelope or package, properly addressed with the required fee prepaid, delivery of which shall not be later than 5 p.m. on the next business day after the effective delinquent date, the remittance shall be deemed received on the date shown by the post office cancellation mark stamped upon the envelope containing the remittance, or the independent delivery service shipment date shown on the packing slip or air bill attached to the outside of the envelope or package containing the remittance, or on the date it was mailed if proof satisfactory to the tax collector establishes that the mailing occurred on an earlier date. The taxing agency is not required to accept such a payment actually received in the mail if it is received more than 30 days after the date and time set by law for the payment. This section shall not, for purposes of applying subdivision (a) of Section 3707, apply to a remittance sent by mail or by independent delivery service for the redemption of tax-defaulted property.

SEC. 23. Section 2610.5 of the Revenue and Taxation Code is amended to read:

2610.5. Annually, on or before November 1, the tax collector shall mail or electronically transmit a county tax bill or a copy thereof for every property on the secured roll. This requirement need not be met where no taxes are due. Failure to receive a tax bill shall not relieve the lien of taxes, nor shall it prevent the imposition of penalties imposed by this code. However, the penalty imposed for delinquent taxes as provided by any section of this code shall be canceled if the assessee or fee owner demonstrates to the tax collector that delinquency is due to the tax collector's failure to mail or electronically transmit the tax bill to the address provided on the tax roll or electronic address provided and authorized by the taxpayer to the tax collector. Penalties imposed may be canceled if the board of supervisors, upon recommendation of the tax collector, has authorized the tax collector to establish, and the tax collector has so established, specific procedures for the consideration of penalty cancellations. Those procedures may provide that penalties imposed may be canceled by resolution of the county board of supervisors upon the recommendation of the tax collector if the assessees or fee owners demonstrate to the tax collector that the delinquency is due to the county's failure to send a notice of taxes to the owner of property acquired after the lien date on the secured roll, provided payment of the amount of taxes due, minus any penalties and costs,

is made no later than June 30 of the fiscal year in which the property owner is named as the assessee for taxes coming due.

With respect to a late, amended, or corrected tax bill, the penalties imposed for delinquent taxes shall be canceled if the tax amount is paid within 30 days following the date that bill is mailed or electronically transmitted.

Under no circumstance shall a taxpayer have fewer than 30 days to pay without penalty.

SEC. 24. Section 2613 of the Revenue and Taxation Code is amended to read:

2613. All taxes on the secured roll shall be paid at the tax collector's office unless the board of supervisors, upon recommendation of the tax collector and on or before the day when payments may be made, orders that taxes be collected in any other or additional location with the county.

SEC. 25. Section 2910.1 of the Revenue and Taxation Code is amended to read:

2910.1. The tax collector may, no later than 30 days prior to the date on which taxes are delinquent and as soon as reasonably possible after receipt of the extended assessment roll, mail or electronically transmit a tax bill for every assessment on the unsecured roll on which taxes are due, unless the total tax bill amount due is too small to justify the cost of collection. Failure to receive a tax bill shall not relieve the lien of taxes, nor shall it prevent the imposition of penalties imposed by this code. However, the penalty imposed for delinquent taxes as provided by any section in this code shall be canceled if the assessee convinces the tax collector that he or she did not receive the tax bill mailed to the address provided on the roll or electronic address provided and authorized by the taxpayer to the tax collector.

SEC. 26. Section 3437 of the Revenue and Taxation Code is amended to read:

3437. The amount due on any property may be paid until the close of business on June 30 if it was separately valued on the secured roll. If June 30 falls on a Saturday, Sunday, or legal holiday, and payment is received by the close of business on the next business day, redemption penalties shall not attach. If the board of supervisors, by adoption of an ordinance or resolution, closes the county's offices for business prior to the time of delinquency on the "next business day" or for that whole day, that day shall be considered a legal holiday for purposes of this section. Section 2512 shall apply to remittances made by mail.

SEC. 27. Section 3440 of the Revenue and Taxation Code is repealed.

SEC. 28. Section 3692 of the Revenue and Taxation Code is amended to read:

3692. (a) The tax collector shall attempt to sell tax-defaulted property as provided in this chapter within four years of the time that

the property becomes subject to sale for nonpayment of taxes unless by other provisions of law the property is not subject to sale. If there are no acceptable bids at the attempted sale, the tax collector shall attempt to sell the property at intervals of no more than six years until the property is sold.

(b) When oil, gas, or mineral rights are subject to sale for nonpayment of taxes, the tax collector may offer the interest at minimum bid to the holders of outstanding interests where the interest subject to sale is a partial interest or, where the interest subject to sale is a complete and undivided interest, to the owner or owners of the property to which the oil, gas, or mineral rights are appurtenant.

(c) When parcels that are rendered unusable by their size, location, or other conditions are subject to sale for nonpayment of taxes, the tax collector may offer the parcel at a minimum bid to owners of contiguous parcels. The tax collector shall require that the successful bidder request the assessor and the planning director to combine the unusable parcel with his or her own parcel as a condition of sale.

(d) Sealed bid sale procedures shall be used when offers are made pursuant to subdivision (b) or (c), and the property shall be sold to the highest eligible bidder. The offers shall remain in effect for 30 days or until notice is given pursuant to Section 3702, whichever is later.

(e) The Notice of Power to Sell Tax-Defaulted Property, Notice of Power and Intent to Sell Tax-Defaulted Property, Notice to the Board of Supervisors, and Notice of Intended Sale of Tax-Defaulted Property shall indicate that any parcel remaining unsold may be resold within a 90-day period and any new parties of interest shall be notified in accordance with Section 3701. This subdivision shall not apply to properties sold pursuant to Chapter 8 (commencing with Section 3771).

SEC. 29. Section 4222.5 of the Revenue and Taxation Code is amended to read:

4222.5. (a) Notwithstanding any other provision of this article, the tax collector of any county that is designated by the Governor to be in a state of emergency or disaster due to a major misfortune or calamity and is therefore an eligible county for tax relief, as defined in Chapter 5 (commencing with Section 194) of Part 2, may defer for a period of one year payments under an installment plan if all of the following conditions are met:

(1) The installment plan was already in existence at the time deferral is requested by the assessee or the agent of the assessee.

(2) The assessee or the agent of the assessee can establish to the satisfaction of the tax collector that the assessee incurred substantial disaster damage as defined in Section 194 in connection with his or her property as a result of the disaster.

(3) The assessee or the agent of the assessee files an application for deferral with the tax collector on or before September 1 of the following fiscal year.

(4) The assessee is not receiving any other relief relating to the disaster.

(b) This section does not preclude the assessment of interest in connection with the deferral of any installment payment. Any interest so assessed shall be due and payable together with the deferred installment payment.

(c) For purposes of this section, "substantial business losses" means net business losses incurred by the assessee after accounting for the assessee's receipt of any federal disaster aid, state disaster aid, related insurance loss claim payments, or property tax relief under Chapter 5 (commencing with Section 194) of Part 2.

SEC. 30. Section 4837.5 of the Revenue and Taxation Code is amended to read:

4837.5. (a) Notwithstanding any other provision of law, taxes due, whether secured or unsecured, on escape assessments for prior fiscal years may be paid over a four-year period at the option of the assessee if: (1) the additional tax is over five hundred dollars ($500), and (2) a written request for installment payment is filed by the assessee with the tax collector prior to the time the second installment of taxes on the secured roll becomes delinquent, or by the last day of the month following the month in which the tax bill is mailed, whichever is later. The tax collector shall include with the property tax bill a notice of the payment provisions of this section. For unsecured taxes, the written request for installment payment shall be filed with the tax collector prior to the date on which those taxes become delinquent.

(b) If payment by installments is requested, 20 percent or more of the tax shall be paid no later than the deadline for filing the written request. The current taxes and prior year taxes with penalties and costs thereon shall be paid with or prior to the initial installment payment. In each succeeding fiscal year, the assessee shall pay, before the delinquency date of the second installment of current taxes on the secured roll, all current year taxes, and a sum at least sufficient to reduce the outstanding balance of the tax by 20 percent of the original amount. In the case of unsecured taxes, the required annual installment shall be paid on or before August 31.

(c) Interest at the rate of three-fourths of 1 percent per month, starting with the month following the date of the deadline for filing the written request, shall be applied to the outstanding balance, on the first day of the month, if the escape or underassessment was due, in whole or in part, to the error, omission, or other fault of the assessee. If the first day of any month falls on a Saturday, Sunday, or legal holiday, the next additional three-fourths of one percent of interest shall be applied to the outstanding balance on the next business day.

(d) No additional penalties shall be charged as long as installment payments are made timely; and, in the case of secured taxes, as long as all payments are made timely, an affidavit regarding the property shall not be published pursuant to Section 3371.

(e) If any installment is not paid timely, or if the property on the secured roll becomes tax defaulted, or if the property changes ownership, or if taxes for the property on the unsecured roll are not paid before becoming delinquent, the balance of the tax remaining to be paid shall immediately become due and payable, and no further installment payments for that escape assessment or correction shall be authorized. The tax collector shall inform the auditor of the defaulted, off-roll installment plan and of the delinquent amount remaining unpaid. With regard to property on the secured roll that has not become tax defaulted, or property on the unsecured roll that has not become delinquent, in the event the payment is missed at the time the second or subsequent installment is due and the assessee or agent of the assessee can, by substantial evidence, convince the tax collector that the payment was not made through any fault of the assessee, the tax collector may reinstate the account upon receipt of a payment in an amount reflecting the installment plus interest under subdivision (c) to the date of reinstatement, provided that the payment is physically received by the tax collector prior to the time the property becomes tax defaulted or prior to June 30 of the current fiscal year, whichever occurs earlier.

(f) The auditor shall add the unpaid balance, plus all penalties and costs thereon, to the current roll, adjust the tax collector's charge accordingly, and the remaining balance of the tax shall become subject to all of the provisions of this division applicable to delinquent taxes.

(g) The tax collector shall maintain records listing the current status of all the installment accounts authorized under this section. The status of each installment account shall be entered on the current roll and the tax collector may file for record with the county recorder a certificate pursuant to Section 2191.3.

(h) When the installment account is paid in full before 5 p.m. on June 30 of the year in which the account has become defaulted and the tax collector has filed for record a certificate of lien, the tax collector shall also file for record a release of that lien. Where the account is not paid in full until after June 30 of the year in which the account became defaulted, the filings of the certificates of lien and release of lien shall be subject to recording fees charged to the taxpayer.

(i) The tax collector may establish a fee for the actual cost of processing a request to pay escaped assessments in installments.

SEC. 31. Section 4985 of the Revenue and Taxation Code is amended to read:

4985. Any delinquent penalty, cost, redemption penalty, interest, or redemption fee, heretofore or hereafter attached, shall upon

satisfactory proof submitted by the tax collector, the auditor, or the assessor, be canceled by the auditor upon a showing that the delinquent penalty, cost, redemption penalty, interest, or redemption fee has attached because of either of the following:

(a) An error of the tax collector, the auditor, or the assessor.

(b) They were unable to complete valid procedures initiated prior to the delinquency date. The collection shall be made upon the further showing that payment of the corrected or additional amount was made within 30 days from the date that the correction was entered on the roll or abstract record.

SEC. 32. Section 8877 of the Revenue and Taxation Code is amended to read:

8877. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 8801, 8854, and 8876.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 33. Section 30103.5 of the Revenue and Taxation Code is amended to read:

30103.5. (a) The tax and surcharge imposed by this part shall not apply to the sale or transfer of untaxed cigarettes or tobacco products to a law enforcement agency for use in a criminal investigation when that sale or transfer is authorized by the board.

(b) A law enforcement agency authorized by the board to receive or purchase cigarettes or tobacco products as provided in subdivision (a) shall not be required to apply for, or obtain, a license as a distributor pursuant to Section 30140.

(c) A law enforcement agency making distributions of cigarettes and tobacco products received or purchased under subdivision (a) is not required to collect or remit the tax or surcharge imposed by this part with respect to those authorized distributions.

SEC. 34. Section 30103.5 of the Revenue and Taxation Code is amended to read:

30103.5. (a) The tax and surcharge imposed by this part shall not apply to the sale or transfer of untaxed cigarettes or tobacco products to a law enforcement agency for use in a criminal investigation when that sale or transfer is authorized by the board.

(b) A law enforcement agency authorized by the board to receive or purchase cigarettes or tobacco products as provided in subdivision (a) shall not be required to apply for, or obtain, a license as a distributor pursuant to Section 30140.

(c) A law enforcement agency making distributions of cigarettes and tobacco products received or purchased under subdivision (a)

is not required to collect or remit the tax or surcharge imposed by this part with respect to those authorized distributions.

SEC. 35. Section 30188 of the Revenue and Taxation Code is amended to read:

30188. On or before the 25th day of each month, every wholesaler shall file on forms prescribed by the board a report respecting his inventory, purchases, and sales of cigarettes or tobacco products during the preceding month and such other information as the board may require to carry out the purposes of this part.

SEC. 36. Section 30436 of the Revenue and Taxation Code is amended to read:

30436. The following property, upon seizure by the board, is hereby forfeited to the State of California:

(a) Cigarettes or tobacco products transported upon the highways, roads or streets of this state in violation of the provisions of Section 30431 or Section 30432.

(b) Cigarettes not contained in packages to which are affixed California cigarette tax stamp or meter impressions or tobacco products upon which the tobacco products surtax has not been paid, which are offered for sale, possessed, kept, stored or owned by any person with the intent of the person to sell the cigarettes or tobacco products without payment of the taxes imposed by this part.

(c) Any cigarette or tobacco product vending machine, together with the cigarettes, tobacco products, money or other contents thereof, which has been loaded in whole or in part with packages of cigarettes which do not have California cigarette tax stamps or meter impressions affixed or tobacco products upon which the tobacco products surtax has not been paid.

(d) Cigarettes contained in packages to which are affixed California cigarette tax stamps or meter impressions in violation of Section 30163.

SEC. 37. Section 38631 of the Revenue and Taxation Code is amended to read:

38631. If any amount has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 38. Section 43010.1 of the Revenue and Taxation Code is amended to read:

43010.1. Notwithstanding Section 43010, for purposes of the fees administered under Sections 43056 and 43057, "department" means the State Department of Health Services.

SEC. 39. Section 43011.1 of the Revenue and Taxation Code is amended to read:

43011.1. Notwithstanding Section 43011, for purposes of the fees administered under Sections 43056 and 43057, "director" means the State Director of Health Services.

SEC. 40. Section 50159 of the Revenue and Taxation Code is amended to read:

50159. (a) The board shall provide any information obtained under this part to the State Water Resources Control Board, including any information regarding underground storage tanks containing petroleum.

(b) The State Water Resources Control Board and the board may utilize any information obtained pursuant to this part to develop data on underground storage tanks containing petroleum within the state. Notwithstanding Section 50161, the State Water Resources Control Board may make this underground storage tank data available to the public.

(c) The board may disclose otherwise confidential information obtained from the lessee or operator of an underground storage tank, or from the person who sold or provided petroleum to the lessee or operator of the underground storage tank, only to the fee payer and only to the extent that this information is necessary for assessment, administration, and verification of the underground storage tank fee.

SEC. 41. 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 942

An act to amend Sections 1624, 1624.01, 1624.02, and 1624.05 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1624 of the Revenue and Taxation Code is amended to read:

1624. A person is not eligible for nomination for membership on an assessment appeals board unless he or she meets one of the following criteria:

(a) Has a minimum of five years professional experience in this state as a certified public accountant or public accountant, a licensed real estate broker, an attorney, a property appraiser accredited by a nationally recognized professional organization, or a property appraiser certified by the Office of Real Estate Appraisers.

(b) Is a person who the nominating member of the board of supervisors has reason to believe is possessed of competent knowledge of property appraisal and taxation.

SEC. 2. Section 1624.01 of the Revenue and Taxation Code is amended to read:

1624.01. (a) On and after January 1, 2001, any person newly selected for membership on, or newly appointed to be a member of, an assessment appeals board shall complete the training described in subdivision (a) of Section 1624.02 prior to the commencement of his or her term on the board or as soon as reasonably possible within one year thereafter.

(b) A member of an assessment appeals board who does not complete the training required by this section in the time permitted shall complete that training within 60 days of the date of the notice by the clerk advising the member that his or her failure to complete the training constitutes resignation by operation of law. If the member fails to comply within 60 days of the notice by the clerk, the member shall be deemed to have resigned his or her position on the board. Notwithstanding the provisions of this section, a board member may continue to retain his or her position on the board in order to complete all appeal hearings to which the member is assigned and which commenced prior to the date of resignation pursuant to this subdivision.

SEC. 3. Section 1624.02 of the Revenue and Taxation Code is amended to read:

1624.02. (a) Every person newly selected for membership on or newly appointed to be a member of, an assessment appeals board shall successfully complete a course of training conducted by either the State Board of Equalization or by the county at county option. Training shall include, but not be limited to, an overview of the assessment process, elements in the conduct of assessment appeal hearings, and important developments in case and statutory law and administrative rules. The curriculum for the course of training provided by the State Board of Equalization shall be developed in consultation with county boards of supervisors, administrators of assessment appeals boards, assessors, and local property taxpayer representatives. The curriculum for the course of training provided by counties shall be developed in consultation with the State Board of Equalization, assessors, and local property taxpayer representatives and subject to final approval by the State Board of Equalization. Training by the State Board of Equalization shall be conducted regionally. For purposes of this section, the term "successfully complete" shall include full-time attendance at the

course of training and a person's receiving a certificate of completion given by the entity conducting the training at the conclusion of the course of training.

(b) There shall be no charge to counties for training conducted by the State Board of Equalization pursuant to this section.

SEC. 4. Section 1624.05 of the Revenue and Taxation Code is amended to read:

1624.05. (a) A person shall not be eligible for nomination for membership on an assessment appeals board unless he or she has a minimum of five years' professional experience in this state as one of the following: certified public accountant or public accountant, licensed real estate broker, attorney, or property appraiser accredited by a nationally recognized professional organization, or property appraiser certified by the Office of Real Estate Appraisers.

(b) Notwithstanding the provisions of subdivision (a), a person shall be eligible for nomination for membership on an assessment appeals board if, at the time of the nomination, he or she is a current member of an assessment appeals board.

(c) This section shall apply only to an assessment appeals board in a county with a population of 200,000 or more.

(d) County population estimates conducted by the Department of Finance pursuant to Section 13073.5 of the Government Code shall be used in determining the population of a county for purposes of this section.

CHAPTER 943

An act to amend Sections 9712 and 9740 of, to add Section 9710.5 to, and to add Article 6 (commencing with Section 9745) to Chapter 11 of Division 8.5 of, the Welfare and Institutions Code, relating to elderly persons.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 9710.5 is added to the Welfare and Institutions Code, to read:

9710.5. (a) The Legislature finds and declares as follows:

(1) The position of State Ombudsman is extremely important to the successful coordination of ombudsman services at the local level.

(2) The position of State Ombudsman requires both an extensive background in social or health services programs, and an ability to manage and motivate individuals and groups.

(3) Remuneration for the position of State Ombudsman should be commensurate with the demands of the position.

(b) The Legislature, therefore, encourages the Director of the California Department of Aging, to do all of the following:

(1) Provide widespread notification of the availability of the position of State Long-Term Care Ombudsman in order to reach the greatest number of qualified candidates and hire the most capable individual for the position.

(2) Within 10 days of the occurrence of a vacancy, publicly announce the vacancy and solicit candidates for the position.

(3) Within 30 days of the occurrence of a vacancy, convene a meeting with the advisory council established by Section 9740, for the purpose of obtaining the advice, consultation, and recommendations of the council regarding the selection of a candidate.

SEC. 2. Section 9712 of the Welfare and Institutions Code is amended to read:

9712. (a) (1) The State Ombudsman shall possess at least a bachelor's degree, and have a minimum of five years' professional experience that shall include at least three of the following four areas:

(A) Gerontology, long-term care, or other relevant social services or health services programs.

(B) The legal system and the legislative process.

(C) Dispute or problem resolution techniques, including investigation, mediation, and negotiation.

(D) Organizational management and program administration.

(2) The professional experience described in paragraph (1) requires any reasonable combination of the fields described in subparagraphs (A) to (D), inclusive, of that paragraph for a total of five years, and does not require five years' experience in each area. At the discretion of the director, a master's or doctorate degree relevant to a field described in paragraph (1) may be substituted for one or two years, respectively, of professional experience. However, the applicant's professional experience and field of study leading to the master's or doctorate degree shall, nevertheless, include all of the fields described in paragraph (1).

(b) The State Ombudsman may not have been employed by any long-term care facility within the three-year period immediately preceding his or her appointment.

(c) Neither the State Ombudsman nor any member of his or her immediate family may have, or have had within the past three years, any pecuniary interest in long-term health care facilities.

SEC. 3. Section 9740 of the Welfare and Institutions Code is amended to read:

9740. (a) The department shall establish an 11-member advisory council for the office. Members of the council shall be appointed by the director, and shall consist of representatives of community organizations, area agencies on aging, two long-term care providers, federal Older Americans Act funded direct services providers, the commission, the California Long-Term Care Ombudsman Association, county government, and other appropriate

governmental agencies. The director shall make the appointments from lists of no less than five names submitted by each of the designated entities.

(b) The advisory council shall provide advice and consultation to the State Long-Term Care Ombudsman Program and the director on issues affecting the provision of ombudsman services, including the review of proposed policy changes to the operation of the program, and may make recommendations, within 30 days, as appropriate. The advisory council shall meet at least three times annually. Representatives on the advisory council shall receive their actual and necessary travel and other expenses incurred in participation on the advisory council.

SEC. 4. Article 6 (commencing with Section 9745) is added to Chapter 11 of Division 8.5 of the Welfare and Institutions Code, to read:

Article 6. Regulations

9745. The department shall 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 initial adoption of any emergency regulations after January 1, 1999, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this chapter shall remain in effect for no more than 180 days.

CHAPTER 944

An act to add Sections 2216.1, 2216.2, and 2240 to the Business and Professions Code, and to amend Section 1248.15 of the Health and Safety Code, relating to medical care.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 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 Cosmetic and Outpatient Surgery Patient Protection Act.

SEC. 2. Section 2216.1 is added to the Business and Professions Code, to read:

2216.1. On and after July 1, 2000, it is unprofessional conduct for a physician and surgeon to perform procedures in any outpatient setting except in compliance with Section 2216, unless the setting has a minimum of two staff persons on the premises, one of whom shall

either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care.

SEC. 3. Section 2216.2 is added to the Business and Professions Code, to read:

2216.2. (a) It is unprofessional conduct for a physician and surgeon to fail to provide adequate security by liability insurance, or by participation in an interindemnity trust, for claims by patients arising out of surgical procedures performed outside of a general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(b) For purposes of this section, the board shall determine what constitutes adequate security.

(c) Nothing in this section shall require an insurer admitted to transact liability insurance in this state to provide coverage to a physician and surgeon.

(d) The security required by this section shall be acceptable only if provided by any one of the following:

(1) An insurer admitted pursuant to Section 700 of the Insurance Code to transact liability insurance in this state.

(2) An insurer that appears on the list of eligible surplus line insurers pursuant to subdivision (f) of Section 1765.1 of the Insurance Code.

(3) A cooperative corporation authorized by Section 1280.7 of the Insurance Code.

SEC. 4. Section 2240 is added to the Business and Professions Code, to read:

2240. (a) Any physician and surgeon who performs a scheduled medical procedure outside of a general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, that results in the death of any patient on whom that medical treatment was performed by the physician and surgeon, or by a person acting under the physician and surgeon's orders or supervision, shall report, in writing on a form prescribed by the board, that occurrence to the board within 15 days after the occurrence.

(b) Any physician and surgeon who performs a scheduled medical procedure outside of a general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, that results in the transfer to a hospital or emergency center for medical treatment for a period exceeding 24 hours, of any patient on whom that medical treatment was performed by the physician and surgeon, or by a person acting under the physician and surgeon's orders or supervision, shall report, in writing, on a form prescribed by the board that occurrence, within 15 days after the occurrence. The form shall contain all of the following information:

(1) Name of the patient's physician in the outpatient setting.

(2) Name of the physician with hospital privileges.

(3) Name of the patient and patient identifying information.

(4) Name of the hospital or emergency center where the patient was transferred.

(5) Type of outpatient procedures being performed.

(6) Events triggering the transfer.

(7) Duration of the hospital stay.

(8) Final disposition or status, if not released from the hospital, of the patient.

(9) Physician's practice specialty and ABMS certification, if applicable.

(c) The form described in subdivision (b) shall be constructed in a format to enable the physician and surgeon to transmit the information in paragraphs (5) to (9), inclusive, to the board in a manner that the physician and surgeon and the patient are anonymous and their identifying information is not transmitted to the board. The entire form containing information described in paragraphs (1) to (9), inclusive, shall be placed in the patient's medical record.

(d) The board shall aggregate the data and publish an annual report on the information collected pursuant to subdivisions (a) and (b).

(e) On and after January 1, 2002, the data required in subdivision (b) shall be sent to the Office of Statewide Health Planning and Development (OSHPD) instead of the board. OSHPD may revise the reporting requirements to fit state and national standards, as applicable. The board shall work with OSHPD in developing the reporting mechanism to satisfy the data collection requirements of this section.

(f) The failure to comply with this section constitutes unprofessional conduct.

SEC. 5. Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The division shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:

(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.

(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.

(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.

(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:

(i) Have a written transfer agreement with a local accredited or licensed acute care hospital, approved by the facility's medical staff.

(ii) Permit surgery only by a licensee who has admitting privileges at a local accredited or licensed acute care hospital, with the exception that licensees who may be precluded from having admitting privileges by their professional classification or other administrative limitations, shall have a written transfer agreement with licensees who have admitting privileges at local accredited or licensed acute care hospitals.

(iii) Submit for approval by an accrediting agency a detailed procedural plan for handling medical emergencies that shall be reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.

(D) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body, the Health Care Financing Administration, the State Department of Health Services, and the appropriate licensing authority.

(3) The outpatient setting shall permit surgery by a dentist acting within his or her scope of practice under Chapter 4 (commencing with Section 1600) of the Business and Professions Code or physician and surgeon, osteopathic physician and surgeon, or podiatrist acting within his or her scope of practice under Chapter 5 (commencing with Section 2000) of the Business and Professions Code or the Osteopathic Initiative Act. The outpatient setting may, in its discretion, permit anesthesia service by a certified registered nurse anesthetist acting within his or her scope of practice under Article 7 (commencing with Section 2825) of Chapter 6 of the Business and Professions Code.

(4) Outpatient settings shall have a system for maintaining clinical records.

(5) Outpatient settings shall have a system for patient care and monitoring procedures.

(6) (A) Outpatient settings shall have a system for quality assessment and improvement.

(B) Members of the medical staff and other practitioners who are granted clinical privileges shall be professionally qualified and appropriately credentialed for the performance of privileges granted. The outpatient setting shall grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting.

(C) Clinical privileges shall be periodically reappraised by the outpatient setting. The scope of procedures performed in the

outpatient setting shall be periodically reviewed and amended as appropriate.

(7) Outpatient settings regulated by this chapter that have multiple service locations governed by the same standards may elect to have all service sites surveyed on any accreditation survey. Organizations that do not elect to have all sites surveyed shall have a sample, not to exceed 20 percent of all service sites, surveyed. The actual sample size shall be determined by the division. The accreditation agency shall determine the location of the sites to be surveyed. Outpatient settings that have five or fewer sites shall have at least one site surveyed. When an organization that elects to have a sample of sites surveyed is approved for accreditation, all of the organizations' sites shall be automatically accredited.

(8) Outpatient settings shall post the certificate of accreditation in a location readily visible to patients and staff.

(9) Outpatient settings shall post the name and telephone number of the accrediting agency with instructions on the submission of complaints in a location readily visible to patients and staff.

(10) Outpatient settings shall have a written discharge criteria.

(b) Outpatient settings shall have a minimum of two staff persons on the premises, one of whom shall either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care. Transfer to an unlicensed setting of a patient who does not meet the discharge criteria adopted pursuant to paragraph (10) of subdivision (a) shall constitute unprofessional conduct.

(c) An accreditation agency may include additional standards in its determination to accredit outpatient settings if these are approved by the division to protect the public health and safety.

(d) No accreditation standard adopted or approved by the division, and no standard included in any certification program of any accreditation agency approved by the division, shall serve to limit the ability of any allied health care practitioner to provide services within his or her full scope of practice. Notwithstanding this or any other provision of law, each outpatient setting may limit the privileges, or determine the privileges, within the appropriate scope of practice, that will be afforded to physicians and allied health care practitioners who practice at the facility, in accordance with credentialing standards established by the outpatient setting in compliance with this chapter. Privileges may not be arbitrarily restricted based on category of licensure.

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CHAPTER 945

An act to add Section 2725.3 to the Business and Professions Code, and to add Section 1276.4 to the Health and Safety Code, relating to health care.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

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

(a) Health care services are becoming complex and it is increasingly difficult for patients to access integrated services.

(b) Quality of patient care is jeopardized because of staffing changes implemented in response to managed care.

(c) To ensure the adequate protection of patients in acute care settings, it is essential that qualified registered nurses and other licensed nurses be accessible and available to meet the needs of patients.

(d) The basic principles of staffing in the acute care setting should be based on the patient's care needs, the severity of condition, services needed, and the complexity surrounding those services.

SEC. 2. Section 2725.3 is added to the Business and Professions Code, to read:

2725.3. (a) A health facility licensed pursuant to subdivision (a), (b), or (f), of Section 1250 of the Health and Safety Code shall not assign unlicensed personnel to perform nursing functions in lieu of a registered nurse and may not allow unlicensed personnel to perform functions under the direct clinical supervision of a registered nurse that require a substantial amount of scientific knowledge and technical skills, including, but not limited to, any of the following:

(1) Administration of medication.

(2) Venipuncture or intravenous therapy.

(3) Parenteral or tube feedings.

(4) Invasive procedures including inserting nasogastric tubes, inserting catheters, or tracheal suctioning.

(5) Assessment of patient condition.

(6) Educating patients and their families concerning the patient's health care problems, including postdischarge care.

(7) Moderate complexity laboratory tests.

(b) This section shall not preclude any person from performing any act or function that he or she is authorized to perform pursuant to Division 2 (commencing with Section 500) or pursuant to existing statute or regulation as of July 1, 1999.

SEC. 3. Section 1276.4 is added to the Health and Safety Code, to read:

1276.4. (a) By January 1, 2001, the State Department of Health Services shall adopt regulations that establish minimum, specific, and numerical licensed nurse-to-patient ratios by licensed nurse classification and by hospital unit for all health facilities licensed pursuant to subdivision (a), (b), or (f) of Section 1250. The department shall adopt these regulations in accordance with the department's licensing and certification regulations as stated in Sections 70053.2, 70215, and 70217 of Title 22 of the California Code of Regulations, and the professional and vocational regulations in Section 1443.5 of Title 16 of the California Code of Regulations. The department shall review these regulations five years after adoption and shall report to the Legislature regarding any proposed changes. Flexibility shall be considered by the department for rural general acute care hospitals in response to their special needs. As used in this subdivision, "hospital unit" means a critical care unit, burn unit, labor and delivery room, postanesthesia service area, emergency department, operating room, pediatric unit, step-down/intermediate care unit, specialty care unit, telemetry unit, general medical care unit, subacute care unit, and transitional inpatient care unit. The regulation addressing the emergency department shall distinguish between regularly scheduled core staff licensed nurses and additional licensed nurses required to care for critical care patients in the emergency department.

(b) These ratios shall constitute the minimum number of registered and licensed nurses that shall be allocated. Additional staff shall be assigned in accordance with a documented patient classification system for determining nursing care requirements, including the severity of the illness, the need for specialized equipment and technology, the complexity of clinical judgment needed to design, implement, and evaluate the patient care plan and the ability for self-care, and the licensure of the personnel required for care.

(c) "Critical care unit" as used in this section means a unit that is established to safeguard and protect patients whose severity of medical conditions requires continuous monitoring, and complex intervention by licensed nurses.

(d) All health facilities licensed under subdivision (a), (b), or (f) of Section 1250 shall adopt written policies and procedures for training and orientation of nursing staff.

(e) No registered nurse shall be assigned to a nursing unit or clinical area unless that nurse has first received orientation in that clinical area sufficient to provide competent care to patients in that area, and has demonstrated current competence in providing care in that area.

(f) The written policies and procedures for orientation of nursing staff shall require that all temporary personnel shall receive

orientation and be subject to competency validation consistent with Sections 70016.1 and 70214 of Title 22 of the California Code of Regulations.

(g) Requests for waivers to this section that do not jeopardize the health, safety, and well-being of patients affected and that are needed for increased operational efficiency may be granted by the state department to rural general acute care hospitals meeting the criteria set forth in Section 70059.1 of Title 22 of the California Code of Regulations.

(h) In case of conflict between this section and any provision or regulation defining the scope of nursing practice, the scope of practice provisions shall control.

(i) The regulations adopted by the department shall augment and not replace existing nurse-to-patient ratios that exist in regulation or law for the intensive care units, the neonatal intensive care units, or the operating room.

(j) The regulations adopted by the department shall not replace existing licensed staff-to-patient ratios for hospitals operated by the State Department of Mental Health.

(k) The regulations adopted by the department for health facilities licensed under subdivision (b) of Section 1250 that are not operated by the State Department of Mental Health shall take into account the special needs of the patients served in the psychiatric units.

(*l*) The department may take into consideration the unique nature of the University of California teaching hospitals as educational institutions when establishing licensed nurse-to-patient ratios. The department shall coordinate with the Board of Registered Nursing to ensure that staffing ratios are consistent with the Board of Registered Nursing approved nursing education requirements. This includes nursing clinical experience incidental to a work-study program rendered in a University of California clinical facility approved by the Board of Registered Nursing provided there will be sufficient direct care registered nurse preceptors available to ensure safe patient care.

(m) A county hospital in a county of the first class, as defined in Section 28022 of the Government Code, shall be subject to a phase-in process developed in conjunction with the department. This phase-in process shall be completed within one year of the adoption of the regulations that implement this section.

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 946

An act to add and repeal Article 24 (commencing with Section 4425) of Chapter 9 of Division 1 of the Business and Professions Code, relating to prescription drugs.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Article 24 (commencing with Section 4425) is added to Chapter 9 of Division 1 of the Business and Professions Code, to read:

Article 24. Prescription Rates for Medicare Beneficiaries

4425. (a) As a condition of a pharmacy's participation in the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000) of Division 9 of the Welfare and Institutions Code, the pharmacy, upon presentation of a valid prescription for the patient and the patient's Medicare card, shall charge Medicare beneficiaries a price that does not exceed the Medi-Cal reimbursement rate for prescription medicines, and an amount, as set by the State Department of Health Services to cover electronic transmission charges. However, Medicare beneficiaries shall not be allowed to use the Medi-Cal reimbursement rate for over-the-counter medications or compounded prescriptions.

(b) The State Department of Health Services shall provide a mechanism to calculate and transmit the price to the pharmacy, but shall not apply the Medi-Cal drug utilization review process for purposes of this section.

(c) The State Department of Health Services shall monitor pharmacy participation with the requirements of subdivision (a) and report to the Legislature annually on that participation. The report shall include, but shall not be limited to, information on any pharmacies that discontinue participation in the Medi-Cal program, and the reasons given for the discontinuance.

(d) If prescription drugs are added to the scope of benefits available under the federal Medicare program, the Senate Office of Research shall report that fact to the appropriate committees of the Legislature. It is the intent of the Legislature to evaluate the need to continue the implementation of this article under those circumstances.

4426. The State Department of Health Services shall conduct a study of the adequacy of Medi-Cal pharmacy reimbursement rates including the cost of providing prescription drugs and services.

4427. This article shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

CHAPTER 947

An act to amend Sections 10232.1, 10232.2, 10232.3, 10232.4, 10233.2, 10233.5, 10235.2, 10235.8, 10235.30, 10235.40, 10235.50, 10235.52, 10237.1, 10237.4, and 10237.5 of, to add Sections 10232.97 and 10235.94 to, and to repeal and add Section 10232.92 of, the Insurance Code, relating to long-term care insurance.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 10232.1 of the Insurance Code is amended to read:

10232.1. (a) Every policy that is intended to be a qualified long-term care insurance contract as provided by Public Law 104-191 shall be identified as such by prominently displaying and printing on page one of the policy form and the outline of coverage and in the application the following words: "This contract for long-term care insurance is intended to be a federally qualified long-term care insurance contract and may qualify you for federal and state tax benefits." Every policy that is not intended to be a qualified long-term care insurance contract as provided by Public Law 104-191 shall be identified as such by prominently displaying and printing on page one of the policy form and the outline of coverage and in the application the following words: "This contract for long-term care insurance is not intended to be a federally qualified long-term care insurance contract."

(b) Any policy or certificate in which benefits are limited to the provision of institutional care shall be called a "nursing facility and residential care facility only" policy or certificate and the words "Nursing Facility and Residential Care Facility Only" shall be prominently displayed on page one of the form and the outline of coverage. The commissioner may approve alternative wording if it is more descriptive of the benefits.

(c) Any policy or certificate in which benefits are limited to the provision of home care services, including community-based services, shall be called a "home care only" policy or certificate and the words "Home Care Only" shall be prominently displayed on page

one of the form and the outline of coverage. The commissioner may approve alternative wording if it is more descriptive of the benefits.

(d) Only those policies or certificates providing benefits for both institutional care and home care may be called "comprehensive long-term care" insurance.

SEC. 2. Section 10232.2 of the Insurance Code is amended to read:

10232.2. (a) Every insurer that offers policies or certificates that are intended to be federally qualified long-term care insurance contracts, including riders to life insurance policies providing long-term care coverage, shall fairly and affirmatively concurrently file, offer, and market long-term care insurance policies or certificates not intended to be federally qualified, as described in subdivision (a) of Section 10232.1.

(b) All long-term care insurance contracts, including riders to life insurance contracts providing long-term care coverage, approved after the effective date of this section shall meet all of the requirements of this chapter.

(c) Until July 1, 2001, or 90 days after approval of contracts submitted for approval pursuant to subdivision (b), whichever comes first, insurers may continue to offer and market previously approved long-term care insurance contracts.

(d) Group policies issued prior to January 1, 1997, shall be allowed to remain in force and not be required to meet the requirements of this chapter, as amended during the 1997 portion of the 1997–98 Regular Session, unless those policies cease to be treated as federally qualified long-term care insurance contracts. If a policy or certificate issued on a group policy of that type ceases to be a federally qualified long-term care insurance contract under the grandfather rules issued by the United States Department of the Treasury pursuant to Section 7702B(f)(2) of the Internal Revenue Code, the insurer shall offer the policy and certificate holders the option to convert, on a guaranteed-issue basis, to a policy or certificate that is federally tax qualified if the insurer sells tax-qualified policies.

SEC. 3. Section 10232.3 of the Insurance Code is amended to read:

10232.3. (a) All applications for long-term care insurance except that which is guaranteed issue, shall contain clear, unambiguous, short, simple questions designed to ascertain the health condition of the applicant. Each question shall contain only one health status inquiry and shall require only a "yes" or "no" answer, except that the application may include a request for the name of any prescribed medication and the name of a prescribing physician. If the application requests the name of any prescribed medications or prescribing physicians, then any mistake or omission shall not be used as a basis for the denial of a claim or the recision of a policy or certificate.

(b) The following warning shall be printed conspicuously and in close conjunction with the applicant's signature block:

"Caution: If your answers on this application are misstated or untrue, the insurer may have the right to deny benefits or rescind your coverage."

(c) Every application for long-term care insurance shall include a checklist that enumerates each of the specific documents which this chapter requires be given to the applicant at the time of solicitation. The documents and notices to be listed in the checklist include, but are not limited to, the following:

(1) The "Important Notice Regarding Policies Available" pursuant to Section 10232.25.

(2) The outline of coverage pursuant to Section 10233.5.

(3) The HICAP notice pursuant to paragraph (8) of subdivision (a) of Section 10234.93.

(4) The long-term care insurance shoppers guide pursuant to paragraph (9) of subdivision (a) of Section 10234.93.

(5) The "Long-Term Care Insurance Personal Worksheet" pursuant to subdivision (c) of Section 10234.95.

(6) The "Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance" pursuant to Section 10235.16 if replacement is not made by direct response solicitation or Section 10235.18 if replacement is made by direct response solicitation. Unless the solicitation was made by a direct response method, the agent and applicant shall both sign at the bottom of the checklist to indicate the required documents were delivered and received.

(d) If an insurer does not complete medical underwriting and resolve all reasonable questions arising from information submitted on or with an application before issuing the policy or certificate, then the insurer may only rescind the policy or certificate or deny an otherwise valid claim, upon clear and convincing evidence of fraud or material misrepresentation of the risk by the applicant. The evidence shall:

(1) Pertain to the condition for which benefits are sought.

(2) Involve a chronic condition or involve dates of treatment before the date of application.

(3) Be material to the acceptance for coverage.

(e) No long-term care policy or certificate may be field issued.

(f) The contestability period as defined in Section 10350.2 for long-term care insurance shall be two years.

(g) A copy of the completed application shall be delivered to the insured at the time of delivery of the policy or certificate.

(h) Every insurer shall maintain a record, in accordance with Section 10508, of all policy or certificate rescissions, both state and countrywide, except those voluntarily initiated by the insured, and shall annually furnish this information to the commissioner in a format prescribed by the commissioner.

SEC. 4. Section 10232.4 of the Insurance Code is amended to read:

10232.4. (a) No long-term care insurance policy or certificate other than a group policy or certificate, as described in subdivision (a) of Section 10231.6, shall use a definition of preexisting condition which is more restrictive than a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within six months preceding the effective date of coverage of an insured person.

(b) Every long-term care insurance policy or certificate shall cover preexisting conditions that are disclosed on the application no later than six months following the effective date of the coverage of an insured, regardless of the date the loss or confinement begins.

(c) The definition of preexisting condition does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subdivision (b) expires. Unless a waiver or rider has been specifically approved by the commissioner, no long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subdivision (b).

SEC. 5. Section 10232.92 of the Insurance Code is repealed.

SEC. 6. Section 10232.92 is added to the Insurance Code, to read:

10232.92. Every long-term care policy or certificate covering confinement in a nursing facility shall also include a provision with the following features:

(a) Care in a residential care facility must be covered. "Residential care facility" means a facility licensed as a residential care facility for the elderly or a residential care facility as defined in the Health and Safety Code. Outside California, eligible providers are facilities that meet applicable licensure standards, if any, and are engaged primarily in providing ongoing care and related services sufficient to support needs resulting from impairment in activities of daily living or impairment in cognitive ability and which also provide care and services on a 24-hour basis, have a trained and ready-to-respond employee on duty in the facility at all times to provide care and services, provide three meals a day and accommodate special dietary needs, have agreements to ensure that residents receive the medical care services of a physician or nurse in case of emergency, and, have appropriate methods and procedures to provide necessary assistance to residents in the management of prescribed medications.

(b) The benefit amount payable for care in a residential care facility shall be no less than 70 percent of the benefit amount payable for institutional confinement.

(c) All expenses incurred by the insured while confined in a residential care facility, for long-term care services that are necessary diagnostic, preventative, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal care services, needed to assist the insured with the disabling conditions that cause the insured to be a chronically ill individual as authorized by Public Law 104-191 and regulations adopted pursuant thereto, shall be covered and payable, up to but not to exceed the maximum daily residential care facility benefit of the policy or certificate. There shall be no restriction on who may provide the service or the requirement that services be provided by the residential care facility, as long as the expenses are incurred while the insured is confined in a residential care facility, the reimbursement does not exceed the maximum daily residential care facility benefit of the policy or certificate, and the services do not conflict with federal law or regulation for purposes of qualifying for favorable tax consideration provided by Public Law 104-191.

(d) In policies or certificates that are not intended to be federally qualified, the threshold establishing eligibility for care in a residential care facility shall be no more restrictive than that for home care benefits, as defined in subdivision (a) of Section 10232.8, and the definitions of impairment in activities of daily living and impairment of cognitive ability shall be the same as for home care benefits, as defined in subdivisions (a) and (g) of Section 10232.8. In policies or certificates that are intended to be federally qualified, the threshold establishing eligibility for care in a residential care facility shall be no more restrictive than that for home care benefits, as defined in subdivision (b) of Section 10232.8, and the definitions of impairment in activities of daily living and impairment in cognitive ability shall be the same as those for home care benefits as defined in subdivisions (b), (c), (d), (e), and (f) of Section 10232.8.

SEC. 7. Section 10232.97 is added to the Insurance Code, to read:

10232.97. In every long-term care policy or certificate that covers care in a nursing facility, the threshold establishing eligibility for nursing facility care shall be no more restrictive than a provision that the insured will qualify if either one of two criteria are met:

(a) Impairment in two activities of daily living.

(b) Impairment in cognitive ability.

SEC. 8. Section 10233.2 of the Insurance Code is amended to read:

10233.2. Long-term care insurance may not:

(a) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder.

(b) Contain a provision establishing a new waiting period in the event existing coverage is converted to, or replaced by, a new or

other form within the same insurer, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder.

(c) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.

(d) Provide for payment of benefits based on a standard described as "usual and customary," "reasonable and customary," or words of similar import.

(e) Terminate a policy, certificate, or rider, or contain a provision that allows the premium for an in-force policy, certificate, or rider, to be increased due to the divorce of a policyholder or certificate holder.

(f) Include an additional benefit for a service with a known market value other than the statutorily required home- and community-based service benefits in Section 10232.9, the assisted living benefit in Section 10232.92, or a nursing facility benefit, unless the additional benefit provides for the payment of at least five times the daily benefit and the dollar value of the additional benefit is disclosed in the schedule page of the policy.

SEC. 9. Section 10233.5 of the Insurance Code is amended to read:

10233.5. (a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.

(b) In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

(c) In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.

(d) The outline of coverage shall be a freestanding document, using no smaller than 10-point type.

(e) The outline of coverage shall contain no material of an advertising nature.

(f) Use of the text and sequence of the text of the outline of coverage set forth in this section is mandatory, unless otherwise specifically indicated.

(g) Text which is capitalized or underscored in the outline of coverage may be emphasized by other means which provide prominence equivalent to capitalization or underscoring.

(h) The outline of coverage shall be in the following form:

"(COMPANY NAME)

(ADDRESS—CITY AND STATE)

(TELEPHONE NUMBER)

LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE

(Policy Number or Group Master Policy and Certificate Number)

1. This policy is (an individual policy of insurance) ((a group policy) which was issued in the (indicate jurisdiction in which group policy was issued)).

2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) Provide a brief description of the right to return—"free look" provision of the policy.

(b) Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains those provisions, include a description of them.

4. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

(a) (For agents) Neither (insert company name) nor its agents represent Medicare, the federal government or any state government.

(b) (For direct response) (insert company name) is not representing Medicare, the federal government or any state government.

5. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage 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, such as in a nursing home, in the community, or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy (limitations) (waiting periods) and (coinsurance) requirements. (Modify this paragraph if the policy is not an indemnity policy.)

6. BENEFITS PROVIDED BY THIS POLICY.

(a) (Covered services, related deductible(s), waiting periods, elimination periods, and benefit maximums.)

(b) (Institutional benefits, by skill level.)

(c) (Noninstitutional benefits, by skill level.)

(Any benefit screens must be explained in this section. If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens must be explained.)

7. LIMITATIONS AND EXCLUSIONS.

(Describe:

(a) Preexisting conditions.

(b) Noneligible facilities/provider.

(c) Noneligible levels of care (e.g., unlicensed providers, care or treatments provided by a family member, etc.).

(d) Exclusions/exceptions.

(e) Limitations.)

(This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in (6) above.)

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

8. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. (As applicable, indicate the following:

(a) That the benefit level will NOT increase over time.

(b) Any automatic benefit adjustment provisions.

(c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage.

(d) If there is a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations.

(e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.)

9. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

(a) Describe the policy renewability provisions.

(b) For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy.

(c) Describe waiver of premium provisions or state that there are no waiver of premium provisions.

(d) State whether or not the company has a right to change premium, and if that right exists, describe clearly and concisely each circumstance under which the premium may change.

10. ALZHEIMER'S DISEASE, ORGANIC DISORDERS, AND RELATED MENTAL DISEASES.

(State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's Disease, organic disorders, or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision that provides preconditions to the availability of policy benefits for that insured.)

11. PREMIUM.

(a) State the total annual premium for the policy.

(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.

12. ADDITIONAL FEATURES.

(a) Indicate if medical underwriting is used.

(b) Describe other important features.

13. INFORMATION AND COUNSELING. The California Department of Insurance has prepared a Consumer Guide to Long-Term Care Insurance. This guide can be obtained by calling the Department of Insurance toll-free telephone number. This number is 1-800-927-HELP. Additionally, the Health Insurance Counseling and Advocacy Program (HICAP) administered by the California Department of Aging, provides long-term care insurance counseling to California senior citizens. Call the HICAP toll-free telephone number 1-800-434-0222 for a referral to your local HICAP office."

SEC. 9.5. Section 10235.2 of the Insurance Code is amended to read:

10235.2. No long-term care insurance policy delivered or issued for delivery in this state shall use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

(a) "Medicare" shall be 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 89th 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.

(b) "Skilled nursing care," "intermediate care," "home health care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care is required to be delivered.

(c) All providers of services, including, but not limited to, skilled nursing facilities, intermediate care facilities, and home health agencies shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

SEC. 10. Section 10235.8 of the Insurance Code is amended to read:

10235.8. No policy may be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as to the following:

(a) Preexisting conditions or diseases.

(b) Alcoholism and drug addiction.

(c) Illness, treatment, or a medical condition arising out of any of the following:

(1) War or act of war, whether declared or undeclared.

(2) Participation in a felony, riot, or insurrection.

(3) Service in the armed forces or units auxiliary thereto.

(4) Suicide, whether sane or insane, attempted suicide, or intentionally self-inflicted injury.

(5) Aviation in the capacity of a non-fare-paying passenger.

(d) Treatment provided in a government facility, unless otherwise required by law, services for which benefits are available under Medicare or other governmental programs (except Medi-Cal or medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no fault law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance.

This section does not prohibit exclusions and limitations by type of provider or territorial limitations.

SEC. 11. Section 10235.30 of the Insurance Code is amended to read:

10235.30. (a) No insurer may deliver or issue for delivery a long-term care policy in this state unless the insurer offers at the time of application an option to purchase a shortened benefit period nonforfeiture benefit with the following features:

(1) Eligibility begins no later than after 10 years of premium payments.

(2) The lifetime maximum benefit is no less than the dollar equivalent of three months of care at the nursing facility per diem benefit contained in the policy or the amount of the premiums paid, whichever is greater.

(3) The same benefits covered in the policy and any riders at the time eligibility begins are payable for a qualifying claim.

(4) The lifetime maximum benefit may be reduced by the amount of any claims already paid.

(5) Cash back, extended term, and reduced paid-up forms of nonforfeiture benefits shall not be allowed.

(6) The lifetime maximum benefit amount increases proportionally with the number of years of premium payment.

(b) This section shall not apply to life insurance policies that accelerate benefits for long-term care.

SEC. 12. Section 10235.40 of the Insurance Code is amended to read:

10235.40. (a) No individual long-term care policy or certificate shall be issued until the applicant has been given the right to designate at least one individual, in addition to the applicant, to receive notice of lapse or termination of a policy or certificate for nonpayment of premium. The insurer shall receive from each applicant one of the following:

(1) A written designation listing the name, address, and telephone number of at least one individual, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium.

(2) A waiver signed and dated by the applicant electing not to designate additional persons to receive notice. The required waiver shall read as follows:

"Protection Against Unintended Lapse.

I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect not to designate any person to receive the notice.

_____ _____

Signature of Applicant Date"

(b) The insurer shall notify the insured of the right to change the written designation, no less often than once every two years.

(c) When the policyholder or certificate holder pays the premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in subdivision (a) need not be met until 60 days after the policyholder

or certificate holder is no longer on that deduction payment plan. The application or enrollment form for a certified long-term care insurance policy or certificate shall clearly indicate the deduction payment plan selected by the applicant.

(d) No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days prior to the effective date of the lapse or termination, gives notice to the insured and to the individual or individuals designated pursuant to subdivision (a), at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first-class United States mail, postage prepaid, not less than 30 days after a premium is due and unpaid.

(e) Each long-term care insurance policy or certificate shall include a provision which, in the event of lapse, provides for reinstatement of coverage, if the insurer is provided with proof of the insured's cognitive impairment or the loss of functional capacity. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of a past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy certificate.

SEC. 13. Section 10235.50 of the Insurance Code is amended to read:

10235.50. Every policy or certificate shall include a provision that gives the policyholder or certificate holder the following rights to reduce coverage and lower premiums:

(a) A right, exercisable any time after the first year, to retain a policy or certificate while lowering the premium in no fewer than the following three ways:

(1) Reducing the lifetime maximum benefit.

(2) Reducing the nursing facility per diem and reducing the home- and community-based service benefits of a home care only policy and of a comprehensive long-term care policy.

(3) Converting a "comprehensive long-term care" policy or certificate to a "Nursing Facility Only" or a "Home Care Only" policy or certificate, if the insurer issues those policies or certificates for sale in the state.

(b) The premium for the policy or certificate that is reduced in coverage will be based on the age of the insured at issue age and the premium rate applicable to the amount of reduced coverage at the original issue date.

(c) If the contract in force at the time a reduction in coverage is made provides for benefit adjustments for anticipated increases in the costs of long-term care services, then the reduced nursing facility per diem, lifetime maximum benefit, and daily, weekly, or monthly home care benefits shall be adjusted in the same manner and in the

same amount as the contract in force prior to the reduction in coverage.

(d) In the event a policy or certificate is about to lapse, the insurer shall provide written notice to the insured of the options in subdivision (a) to lower the premium by reducing coverage and of the premiums applicable to the reduced coverage options. The insurer may include in the notice additional options to those required in subdivision (a). The notice shall provide the insured at least 30 days in which to elect to reduce coverage and the policy shall be reinstated without underwriting if the insured elects the reduced coverage.

(e) In the event of a premium increase, the insured shall be offered the option to lower premiums and reduce coverage.

SEC. 14. Section 10235.52 of the Insurance Code is amended to read:

10235.52. (a) Every policy shall contain a provision that, in the event the insurer develops new benefits or benefit eligibility or new policies with new benefits or benefit eligibility not included in the previously issued policy, the insurer will grant current holders of its policies who are not in benefit or within the elimination period the following rights:

(1) The policyholder will be notified of the availability of the new benefits or benefit eligibility or new policy within 12 months. The insurer's notice shall be filed with the department at the same time as the new policy or rider.

(2) The insurer shall offer the policyholder new benefits or benefit eligibility in one of the following ways:

(A) By adding a rider to the existing policy and paying a separate premium for the new benefit or benefit eligibility based on the insured's attained age. The premium for the existing policy will remain unchanged based on the insured's age at issuance.

(B) By replacing the existing policy or certificate in accordance with Section 10234.87.

(C) By replacing the existing policy or certificate with a new policy or certificate in which case consideration for past insured status shall be recognized by setting the premium for the replacement policy or certificate at the issue age of the policy or certificate being replaced.

(b) The insured may be required to undergo new underwriting, but the underwriting can be no more restrictive than if the policyholder or certificate holder were applying for a new policy or certificate.

(c) The insurer of a group policy as defined under subdivisions (a) to (c), inclusive, of Section 10231.6 must offer the group policyholder the opportunity to have the new benefits and provisions extended to existing certificate holders, but the insurer is relieved of the obligations imposed by this section if the holder of the group policy declines the issuer's offer.

SEC. 15. Section 10235.94 is added to the Insurance Code, to read:

10235.94. Every policy or certificate shall include a provision giving the policyholder or certificate holder the right to appeal decisions regarding benefit eligibility, care plans, services and providers, and reimbursement payments.

SEC. 16. Section 10237.1 of the Insurance Code is amended to read:

10237.1. No insurer may deliver or issue for delivery a long-term care insurance policy or certificate in this state unless the insurer offers to each policyholder and certificate holder, in addition to any other inflation protection, the option to purchase a long-term care insurance policy or certificate that provides for benefit levels and benefit maximums to increase to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers shall offer to each policyholder and certificate holder, at the time of purchase, the option to purchase a long-term care insurance policy or certificate containing an inflation protection feature which is no less favorable than one that does one or more of the following:

(a) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate of not less than 5 percent.

(b) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status and without regard to claim status or history so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 5 percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made.

(c) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount limit.

(d) The insurer of a group long-term care insurance policy as defined in subdivision (a), (b), or (c) of Section 10231.6, shall offer the holder of the group policy the opportunity to have the inflation protection pursuant to this section extended to existing certificate holders, but the insurer is relieved of the obligations imposed by this section if the holder of the group policy declines the insurer's offer.

SEC. 17. Section 10237.4 of the Insurance Code is amended to read:

10237.4. (a) Inflation protection benefit increases under a policy that contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(b) An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(c) The inflation protection benefit increases under a policy or certificate that contains an inflation protection feature shall not be reduced due to the payment of claims.

SEC. 18. Section 10237.5 of the Insurance Code is amended to read:

10237.5. (a) An inflation protection provision that increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than 5 percent shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder.

(b) The rejection, to be included in the application or on a separate form, shall state:

"I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed the plan, and I reject 5 percent annual compound inflation protection.

_____ _____

Signature of Applicant Date"

CHAPTER 948

An act to add Section 9101.5 to the Welfare and Institutions Code, relating to aging, and making an appropriation therefor.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Californians need and want services that are responsive to their gender, age, and cultural and ethnic heritage.

(b) Public programs, services, and assistance for aging Californians are administered by many state and local entities without the benefit of a statewide, long-term master plan. The results are a fragmented, uncoordinated approach of services data collection.

(c) Given the rapid demographic, economic, and social changes taking place in California, particularly the dramatic and projected increase in the number of aging Californians, there must be immediate action to develop a comprehensive plan to address future housing, transportation, education, employment, health care, legal, and insurance needs.

(d) Administrative, budgetary, programmatic, and historical impediments which inhibit change and progress must be identified and removed so California can create an efficient, consumer-oriented service delivery system.

(e) California must address the health and social challenges of aging in the 21st century by planning and delivering a continuum of services and assistance which respect individual choices and provide family support.

(f) Developing this continuum, eliminating duplication of effort, enhancing coordination, and setting priorities for resource allocation must not occur without meaningful involvement of consumers, public and private providers, and state and local entities working in a partnership to create the master plan.

(g) It is in the interest of the State of California that the California Health and Human Services Agency provide leadership to identify, develop, and sustain data bases to analyze public policies and resource allocations and create the framework for a statewide, long-term master plan for aging Californians in the 21st century.

SEC. 2. Section 9101.5 is added to the Welfare and Institutions Code, to read:

9101.5. (a) (1) The University of California is requested to compile the following information:

(A) A survey of existing resources throughout California's governmental and administrative structure that are available to address the needs of an aging society. The survey shall include, but not be limited to, a commentary on existing gaps in these resources, and projections for gaps that may occur, based on existing and future demographic trends. The survey required by this subparagraph shall be submitted to the Legislature and the Secretary of the California Health and Human Services Agency by no later than January 1, 2001. The survey shall avoid any duplication with the implementation of the report on long-term care programs required by Chapter 1.5 (commencing with Section 100145) of Part 1 of Division 101 of the Health and Safety Code.

(B) A composite demographic profile of California. The University of California shall commence the profile required by this subparagraph by January 1, 2001, and shall complete the profile no later than January 1, 2002.

(C) The development of a plan for a longitudinal data base of Californians. The University of California shall commence the development of the plan for a data base required by this subparagraph by January 1, 2002.

(D) Findings and recommendations, and steps for their implementation.

(2) This subdivision shall not apply to the University of California unless the Regents of the University of California, by resolution, make these provisions applicable.

(b) Based upon the findings, recommendations, and data presented by the University of California, as specified in subdivision (a), the Secretary of the California Health and Human Services Agency shall, with the consultation or advise of the California Commission on Aging, the California Council on Gerontology and Geriatrics, consumer groups, and other interested parties, develop a statewide strategic plan for California to address the impending demographic, economic, and social changes triggered by California's aging and diversifying society. The secretary shall submit the completed plan to the Legislature for consideration by July 1, 2003. It is the intent of the Legislature that the department hold public hearings on the reports.

(c) The plan developed pursuant to subdivision (a) shall be periodically updated.

(d) The sum of one hundred twenty-five thousand dollars ($125,000) is hereby appropriated from the General Fund to the University of California if the University of California conducts the survey of existing resources required by subparagraph (A) of paragraph (1) of subdivision (a).

CHAPTER 949

An act to amend Sections 1771, 1771.5, 1771.9, 1779, and 1788 of, and to add Section 1771.11 to, the Health and Safety Code, relating to continuing care.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1771 of the Health and Safety Code is amended to read:

1771. Unless the context otherwise requires, the definitions in this section govern the interpretation of this chapter.

(a) (1) "Affinity group" means a grouping of individuals sharing a common interest, philosophy, or connection (e.g., military officers, religion).

(2) "Annual report" means audited financial statements and reserve calculations (as required by Sections 1792.2 and 1793), with accompanying certified public accountant's opinions thereon, resident lists, evidence of fidelity continuing care bond, and certification that the contract in use for new residents has been approved by the department, all to be submitted to the department by each provider annually, as required by Section 1790.

(3) "Applicant" means any entity that submits an application to the department for a permit to sell deposit subscriptions and certificates of authority.

(4) "Audited financial statement" means financial statements prepared in accordance with generally accepted accounting principles and shall include the opinion of an independent certified public accountant; and notes to the financial statements considered customary or necessary to full disclosure or adequate understanding of the financial statements, financial condition, and operation.

(b) [reserved]

(c) (1) "Cancellation" means to destroy the force and effect of an agreement or continuing care contract, by making or declaring it void or invalid.

(2) "Cancellation period" means the 90-day period, beginning when the transferor signs the continuing care contract, during which time the resident or transferor may rescind the continuing care contract.

(3) "Care" means nursing, medical, or other health related services, protection or supervision, assistance with the personal activities of daily living, or any combination of those services.

(4) "Cash equivalent" means certificates of deposit and United States treasury securities with a maturity of five years or less. Possession and control of any of these instruments shall be transferred to the escrow agent or depository at the time the deposit is paid.

(5) "Certificate" or "certificate of authority" means the written authorization from the department for a specified provider to enter into one or more continuing care contracts at a single specified continuing care retirement community.

(6) "Condition" means a restriction or required action placed on a provisional or final certificate of authority by the department. A condition may limit the circumstances under which the provider may enter into any new contract, or may be a condition precedent to the issuance of a final certificate of authority.

(7) "Consideration" means some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other.

(8) "Continuing care contract" means a written contract that includes a promise, expressed or implied, by a provider to provide one or more elements of care to an elderly resident for the duration of his or her life or for a term in excess of one year, in exchange for the payment of an entrance fee, the payment of periodic charges, or both types of payments. A continuing care contract may consist of one agreement or a series of agreements and may have other writings incorporated by reference. A life care contract, as defined in paragraph (1) of subdivision (*l*), is a type of continuing care contract.

(9) "Continuing care contract committee" means an advisory panel appointed pursuant to Section 1777.

(10) "Continuing care retirement community" (CCRC) means a facility where services promised in a continuing care contract are provided. A distinct phase of development approved by the department may be considered to be the continuing care retirement community when a project is being developed in successive multiple phases over a period of time. When the services are provided in a resident's own home, the homes into which the provider takes those services collectively are considered part of the community.

(11) "Control" means the power to direct or cause the direction of the management and policies of an operator of a continuing care retirement community, whether through the ownership of voting securities, by contract, or otherwise. A parent or sole corporate member of a corporation may exhibit control of the operator of the continuing care retirement community through direct participation in the initiation or approval of policies directly affecting the operations, including, but not limited to, approval of budgets or approval of the continuing care retirement community administrator.

(d) (1) "Department" means the State Department of Social Services.

(2) "Deposit subscription" means a cash or cash equivalent payment made by a subscriber to an applicant and the escrow agent prior to the release of escrow during development or construction of a continuing care retirement community.

(3) "Deposit subscription agreement" means a written contract in compliance with Section 1780.4 entered into between the transferor and applicant. This agreement allows an applicant to accept deposit subscriptions prior to the issuance of a provisional certificate of authority.

(4) "Depository" means a bank or institution that is a member of the Federal Deposit Insurance Corporation or a comparable title insurance program. The department's approval of the depository shall be based, in part, upon its capability to ensure the safety of funds and properties entrusted to it and capable and willing to perform the obligations of the depository pursuant to the escrow agreement and this chapter. The depository may be the same entity as the escrow agent.

(5) "Director" means the Director of the State Department of Social Services.

(e) (1) "Elderly" means an individual who is 60 years of age or older.

(2) "Entity" means an organization or being that possesses separate existence for tax purposes. Entity includes a person, sole proprietorship, estate, trust, association, joint venture, partnership, or corporation.

(3) "Entrance fee" means an initial or deferred transfer of consideration made or promised to be made by a person entering into a continuing care contract, for the purpose of assuring care or related

services pursuant to that continuing care contract or as full or partial payment for the promise to provide one or more elements of care for the term of the continuing care contract. An entrance fee includes the purchase price of a condominium, cooperative, or other interest sold in connection with a promise of continuing care. The entrance fee may include a previously paid deposit subscription, which is credited to the total entrance fee due at the time the transferor signs the continuing care contract. An entrance fee that is greater than 12 times the monthly fee shall be presumed to imply a promise to provide care for more than one year. The term "accommodation fee" may be synonymously used to mean an entrance fee.

(4) "Equity" means the residual value of a business or property beyond any mortgage or deed of trust thereon and liability therein.

(5) "Equity project" means a continuing care development project in which the transferors are given an equity interest in the continuing care retirement community property or in a transferable membership in a resident's association.

(6) "Escrow agent" means a bank or institution, including, but not limited to, a title insurance company, approved by the department as capable of ensuring the safety of the funds and properties entrusted to it and capable and willing to perform the terms of the escrow pursuant to the escrow agreement and this chapter.

(f) "Facility" means any place or accommodation in which a provider undertakes to provide a resident with care or related services, whether or not the place or accommodation is constructed, owned, leased, rented, or otherwise contracted for by the provider.

(g) [reserved]

(h) [reserved]

(i) "Inactive certificate of authority" means a certificate that has been declared inactive under Section 1793.8 and renders its holder no longer authorized to enter into continuing care contracts, but still contractually obligated to continuing care residents and statutory compliance requirements.

(j) [reserved]

(k) [reserved]

(*l*) (1) "Life care contract" means a continuing care contract that includes a promise, expressed or implied, by a provider to provide routine services at all levels of care, including acute care and the services of physicians and surgeons, to a resident for the duration of his or her life. Care shall be provided in a continuing care retirement community having a comprehensive continuum of care, including a skilled nursing facility, under the ownership and supervision of the provider on or adjacent to the premises. In a life care contract, no change is made in the monthly fee based on level of service. A life care contract shall also include provisions to subsidize residents who become financially unable to pay their monthly care fees.

(2) "Life lease" means a landlord-tenant relationship in which the tenant obtains only the right to possess a defined living unit for life.

In a life lease there is no obligation or intent to provide care and services to the tenant at any time, present or future.

(m) (1) "Monthly care fee" means the monthly charge to a resident for accommodations and services rendered, including care, board, or lodging, and any other periodic charges to the resident, determined on a monthly or other recurring basis, pursuant to the provisions of a continuing care contract. Monthly care fees are exclusive of periodic entrance fee payments or other prepayments.

(2) "Monthly fee contract" means a continuing care contract that provides by its terms for the monthly payment of a fee for accommodations and services rendered.

(n) "Nonambulatory person" means a person who is unable to leave a building unassisted under emergency conditions, as described by Section 13131.

(o) [reserved]

(p) (1) "Per capita cost" means a continuing care retirement community's operating expenses, excluding depreciation, divided by the average number of residents.

(2) "Permit to sell deposit subscriptions" means a written authorization by the department for an applicant to enter into one or more deposit subscription agreements at a single specified location.

(3) "Personal care" means assistance with personal activities of daily living, including dressing, feeding, toileting, bathing, grooming, mobility, and associated tasks, to help provide for and maintain physical and psychosocial comfort.

(4) "Personal care unit" means the living unit within a physical area of a continuing care retirement community specifically designed to provide ongoing personal care. A personal care unit is synonymous with an assisted living unit.

(5) "Prepaid contract" means a continuing care contract in which the monthly care fee, if any, may not be adjusted to cover the actual cost of care and services.

(6) "Processing fee" means a payment by the transferor to cover administrative costs of processing the application of a subscriber or prospective resident.

(7) "Promise to provide care" means any expressed or implied representation that care will be provided or will be available, such as by preferred access, whether the representation is part of a continuing care contract, other agreement, or series of agreements, or is contained in any advertisement, brochure, or other material, either written or oral.

(8) "Proposes" means a representation that an applicant or provider plans to make a future promise to provide care, which may be subject to the happening of certain events, such as continuing care retirement community construction or obtaining a certificate of authority.

(9) "Provider" means an entity that provides, promises to provide, or proposes to promise to provide, care for life or for more than one year. "Provider" includes any entity that controls the entity that promises care as determined by the department. A homeowner's association, cooperative, or condominium association shall not be a provider.

(10) "Provisional certificate of authority" means written authorization by the department that allows the provider to enter into continuing care contracts. This provisional certificate is issued after the conditions defined in Section 1786 have been met and is issued for a term specified by subdivision (b) of Section 1786.

(q) [reserved]

(r) (1) "Refundable reserve" means the amount calculated to ensure the availability of funds for specified refunds of entrance fees.

(2) "Refundable contract" means a continuing care contract form that includes promises, expressed or implied, to pay refunds of entrance fees or to repurchase the transferor's unit, membership, stock, or other interest in the continuing care retirement community when the specified refund right is not fully amortized by the end of the sixth year of residency. A lump sum payment to a resident after termination of a continuing care contract that is conditioned upon resale of a unit shall not be considered a refund and shall not be advertised as a refund.

(3) "Reservation fee" means cash received by an applicant from an interested individual during a market test feasibility study that complies with subdivision (b) of Section 1771.6.

(4) "Resident" means a person who enters into a continuing care contract with a provider, or who is designated in a continuing care contract to be a person being provided or to be provided services, including care, board, or lodging.

(5) "Residential care facility for the elderly" means a housing arrangement as defined by Section 1569.2.

(6) "Residential living unit" means a living unit in a continuing care retirement community that is included in the residential care facility for the elderly license capacity, but not used exclusively for personal care or nursing services.

(s) "Subscriber" means a person who has applied to be a resident in a continuing care retirement community under development or construction, and who has entered into a deposit subscription agreement.

(t) (1) "Termination" means the ending of a continuing care contract as provided for in the terms of the continuing care contract.

(2) "Transfer" means conveyance of a right, title, or interest.

(3) "Transfer fee" means a levy by the provider against the proceeds from the sale of a transferor's equity interest.

(4) "Transfer trauma" means death, depression, or regressive behavior caused by the abrupt and involuntary transfer of an elderly resident from one home to another, resulting in a loss of familiar

physical environment, loss of well-known neighbors, attendants, nurses and medical personnel, the stress of an abrupt break in the small routines of daily life, and the major loss of visits from friends and relatives who may be unable to reach the new facility.

(5) "Transferor" means a person who transfers or promises to transfer a sum of money or property for the purpose of assuring care or related services pursuant to a continuing care contract, whether for the benefit of the transferor or another.

SEC. 2. Section 1771.5 of the Health and Safety Code is amended to read:

1771.5. (a) No resident of any continuing care retirement community shall be deprived of any civil or legal right, benefits, or privileges guaranteed by law, by the California Constitution, or by the United States Constitution solely by reason of status as a resident of a community. In addition, because of the discretely different character of condominium and independent living programs that are a part of a continuing care retirement community, this section shall augment Chapter 3.9 (commencing with Section 1599), Section 73523 of the California Code of Regulations, and applicable federal law and regulations. All residents in independent living programs have all of the following rights:

(1) To live in an attractive, safe, and well maintained physical environment.

(2) To live in an environment that enhances personal dignity, maintains independence, and encourages self-determination.

(3) To participate in activities that meet individual physical, intellectual, social, and spiritual needs.

(4) To expect effective channels of communication between residents and staff, and between residents and the administration or board of directors.

(5) To receive a clear and complete written contract that establishes the mutual rights and obligations of the resident and the continuing care retirement community.

(6) To maintain and establish ties to the local community.

(b) A continuing care retirement community shall maintain an environment that enhances the residents' self-determination and independence. The provider shall:

(1) Permit the formation of a resident council by interested residents, provide space and post notices for meetings, and provide assistance in attending meetings for those residents who request it. In order to permit a free exchange of ideas, at least part of each meeting shall be conducted without the presence of any continuing care retirement community personnel. The council may, among other things, make recommendations to management regarding resident issues which impact their quality of life. Proper notice shall be provided of all council meetings and the meetings shall be open to all residents to attend as well as present issues when prearranged

with the council president. Executive sessions of the council shall be for attendance only by council members.

(2) Establish policies and procedures that promote the sharing of information, dialogue between residents and management and access to the board of directors or general partners. The policies and procedures shall be evaluated at a minimum of every two years by the continuing care retirement community administration to determine their effectiveness in maintaining meaningful resident/management relations.

(c) In addition to any statutory or regulatory bill of rights required to be provided to residents of residential care facilities or skilled nursing facilities, the provider shall provide a copy of the bill of rights provided for by this section to each resident at or before the resident's admission to the community.

(d) The department may, upon receiving a complaint relative to this section, request a copy of the policies and procedures along with documentation on the conduct and findings of any self-evaluations and consult with the Continuing Care Contract Committee for determination of compliance.

(e) Failure to comply with this section shall be grounds for suspension, condition, or revocation of the provisional or final certificate of authority pursuant to Section 1793.21.

SEC. 3. Section 1771.9 of the Health and Safety Code is amended to read:

1771.9. (a) (1) The Legislature finds and declares all of the following:

(A) The residents of continuing care retirement communities have a unique and valuable perspective on the operations of and services provided in the community in which they live.

(B) Resident input into decisions made by the provider is an important factor in creating an environment of cooperation, reducing conflict, and ensuring timely response and resolution to issues that may arise.

(C) Continuing care retirement communities are strengthened when residents know that their views are heard and respected.

(2) The Legislature encourages continuing care retirement communities to exceed the minimum resident participation requirements established by this section by, among other things, the following:

(A) Encouraging residents to form a resident council, assisting the residents, resident council, and resident association to keep informed about the operation of the community.

(B) Encouraging residents of a community or their elected representatives to select residents to participate as board members of the provider.

(C) Quickly and fairly resolving any dispute, claim, or grievance arising between a resident and the community.

(b) The governing body of a provider, or the designated representative of the provider, shall hold, at a minimum, semiannual meetings with the residents of the continuing care retirement community, or a committee of residents, for the purpose of the free discussion of subjects including, but not limited to, income, expenditures, and financial trends and issues as they apply to the community and proposed changes in policies, programs, and services. Nothing in this section precludes a provider from taking action or making a decision at any time, without regard to the meetings required under this subdivision.

(c) At least 30 days prior to the implementation of any increase in the monthly care fee, the designated representative of the provider shall convene a meeting, to which all residents shall be invited, for the purpose of discussing the reasons for the increase, the basis for determining the amount of the increase, and the data used for calculating the increase. This meeting may coincide with the semiannual meetings provided for in subdivision (b).

(d) Residents shall be provided at least 14 days' advance notice of each meeting provided for in subdivisions (b) and (c). The notice of, and the agenda for, the meeting shall be posted in a conspicuous place in the community at least 14 days prior to the meeting. The agenda and accompanying materials shall be available to residents of the community upon request.

(e) Each provider shall make available to the resident council, if any, or a committee of residents, a financial statement of activities comparing actual costs to budgeted costs broken down by expense category, not less than semiannually, and shall consult with the resident council, if any, or a committee of residents, during the annual budget planning process.

(f) Each provider shall, within 10 days after the annual report required pursuant to Section 1790 is submitted to the department, provide, at a central and conspicuous location in the community, a copy of the annual report, including a copy of the annual audited financial statement, but excluding personal confidential information.

(g) Each provider shall maintain, as public information, available upon request to residents, prospective residents, and the public, minutes of the board of director's meetings and shall retain these records for at least three years from the date the records were filed or issued.

(h) (1) The governing body of a provider that is not part of a multifacility organization with more than one continuing care retirement community in the state shall accept at least one resident of the continuing care retirement community it operates to participate as a nonvoting resident representative to the provider's governing body.

(2) In a multifacility organization having more than one continuing care retirement community in the state, the governing body of the multifacility organization shall elect either to have at least

one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every three California-based continuing care retirement communities or fraction thereof that the provider operates.

(i) (1) In order to encourage innovative and alternative models of resident involvement, a resident selected pursuant to subdivision (h) to participate as a resident representative to the provider's governing body may, at the option of the resident council or association, be selected in any one of the following ways:

(A) By a majority vote of the resident council or resident association of a provider or by a majority vote of a resident-elected committee of residents of a multifacility organization.

(B) If no resident council or resident association exists, any resident may organize a meeting of the majority of the residents of the community to select or nominate residents to represent them before the governing body.

(C) Any other method designated by the resident council or resident association.

(2) The residents' council, association, or organizing resident, or in the case of a multifacility organization, the resident-elected committee of residents, shall give residents of the community at least 30 days' advance notice of the meeting to select a resident representative and shall post the notice in a conspicuous place at the community.

(j) Except as provided in subdivision (k), the resident representative shall receive the same notice of board meetings, board packets, minutes, and other materials as members and shall be permitted to attend, speak, and participate in all meetings of the board.

(k) Notwithstanding subdivision (j), the governing body may exclude resident representatives from its executive sessions and from receiving board materials to be discussed during executive session. However, resident representatives shall be included in executive sessions and shall receive all board materials to be discussed during executive sessions related to discussions of the annual budgets, increases in monthly care fees, indebtedness, and expansion of new and existing facilities.

(*l*) The provider shall pay all reasonable travel costs for the resident representative.

(m) The provider shall disclose in writing the extent of resident involvement with the board to prospective residents.

(n) Nothing in this section shall prohibit a provider from exceeding the minimum resident participation requirements of this

section by, for example, having more resident meetings or more resident representatives to the board than required or by having one or more residents on the provider's governing body who are selected with the active involvement of residents.

(o) On or before January 1, 2001, the Continuing Care Contracts Committee of the department established pursuant to Section 1777 shall evaluate and report to the Legislature on the implementation of this section.

SEC. 4. Section 1771.11 is added to the Health and Safety Code, to read:

1771.11. Each provider shall adopt a comprehensive disaster preparedness plan specifying policies for evacuation, relocation, continued services, reconstruction, organizational structure, insurance coverage, resident education, and plant replacement.

SEC. 5. Section 1779 of the Health and Safety Code is amended to read:

1779. (a) An application for a permit to sell deposit subscriptions and certificates of authority shall be filed with the department, as set forth in this chapter, in any of the following circumstances:

(1) Prior to entering into any continuing care contracts or any deposit subscription agreements.

(2) Prior to initiating construction of a prospective continuing care retirement community.

(3) Prior to initiating construction on a new phase or expansion of an existing continuing care retirement community. An expansion has occurred when there is an increase in Residential Care Facility for the Elderly license capacity, an increase in the number of units at the continuing care retirement community, an increase in the number of skilled nursing beds, or additions to or replacement of existing continuing care retirement community structures that affects obligations to current residents. The department may waive all or portions of the application content requirements under Section 1779.4 for an expansion of an existing continuing care retirement community.

(4) Prior to converting an existing structure to a continuing care retirement community.

(5) Prior to recommencing marketing on a planned facility when the applicant has previously forfeited a permit to sell deposit subscriptions pursuant to Section 1793.7.

(6) Prior to executing new continuing care contracts after a provisional or final certificate of authority has been inactivated, revoked, surrendered, or forfeited.

(7) Prior to closing the sale or transfer of a continuing care retirement community.

(b) If the provider undergoes an organizational change, including, but not limited to, a change in structure, separation, or merger, a new application shall be required and a new certificate of

authority must be issued by the department before any continuing care contracts may be executed by the new entity.

(c) A new application is not required for an entity name change if there is no change in the entity structure or management. If the provider undergoes a name change, the provider shall notify the department of the name change and shall return the previously issued certificate of authority for reissuance under the new corporate name.

(d) Within 10 days of submitting an application for a certificate of authority pursuant to paragraph (3) or (7) of subdivision (a), the provider shall notify residents of the existing community or communities of its application for a permit. The provider shall notify the resident's council or association of any plans filed with the department to obtain new financing, additional financing for the facility, the sale or transfer of a community facility, any change in structure, and of any applications to the department for any expansion of the facility. A summary of the plans and application shall be posted in a prominent location in the facility so as to be accessible to all residents and the general public, indicating in the summary where the full plans and application may be inspected in the facility.

SEC. 6. Section 1788 of the Health and Safety Code is amended to read:

1788. (a) Any continuing care contract shall contain all of the following:

(1) The legal name and address of the provider.

(2) The name and address of the continuing care retirement community.

(3) The resident's name and number of the unit to be occupied.

(4) If the transferor is someone other than the resident, the transferor's name and address shall be separately designated.

(5) If the provider has used the name of any charitable or religious or nonprofit organization in its title before January 1, 1979, and continues to use that name, and that organization is not responsible for the financial and contractual obligations of the provider, the provider shall include in every continuing care contract a conspicuous statement which clearly informs the transferor that the organization is not financially responsible.

(6) The date the continuing care contract is signed by the transferor.

(7) The duration of the continuing care contract.

(8) A list of the following services that are to be made available to the resident, which shall include at a minimum, the following conditions for residential care facility for the elderly licensure:

(A) Regular observation of the resident's health status to ensure that his or her dietary needs, social needs, and needs for special services are satisfied.

(B) Safe and healthful living accommodations, including housekeeping services and utilities.

(C) Maintenance of house rules for the protection of residents.

(D) A planned activities program, which includes social and recreational activities appropriate to the interests and capabilities of the resident.

(E) Three balanced, nutritious meals and snacks made available daily, including special diets prescribed by a physician as a medical necessity.

(F) Personal care.

(G) Assistance with taking medications.

(H) Central storing and distribution of medications.

(I) Arrangements to meet health needs, including arranging transportation.

(9) An itemization of the services that are included in the monthly fee and the services that are available at an extra charge. The provider shall attach a current fee schedule to the continuing care contract.

(10) The procedures and conditions under which residents may be voluntarily or involuntarily transferred from their designated living units. The transfer procedures, at a minimum, shall provide for all of the following:

(A) When, in the opinion of the continuing care retirement community management, a physician and surgeon, appropriate specialist, or licensing official, any of the following conditions exists:

(i) The resident is nonambulatory. The definition of nonambulatory, as defined in Section 13131, shall either be stated in the continuing care contract or be cited, with a copy of it made available, as an attachment or by specifying that it will be provided upon request. If the resident occupies a room that has a fire clearance for nonambulatory residence, provision for transfer under the above circumstances is unnecessary.

(ii) Resident develops a physical or mental condition that endangers the health, safety, or well-being of the resident or another person, or causes an unreasonable and ongoing disturbance at the continuing care retirement community.

(iii) Transfer to the continuing care retirement community's skilled nursing facility or personal care unit is required for more efficient care and/or to protect the health of other residents, or because the level of care needed cannot lawfully be provided in the living unit.

(iv) Transfer to a nursing home or hospital or other facility is required and the provider has no facilities available for such care.

(B) Provision for transfer of a second resident when a shared accommodation arrangement is terminated.

(C) When transfer is requested or required, by provider or resident, for any other reason.

(11) Provisions for any change in the monthly rate and any refund of entrance fees when a resident transfers from any unit.

(12) Any continuing obligations of the provider in the event a resident is transferred.

(13) Whether the provider has any responsibility to resume care after a temporary transfer.

(14) The obligations of the provider for continued services to the resident while the resident is absent from the continuing care retirement community.

(15) The conditions under which the resident permanently releases his or her living unit.

(16) If real or personal properties are transferred in lieu of cash, a statement as to their value at the time of transfer, and how the value was ascertained shall be included.

(A) An itemized receipt which includes the information described above is acceptable, if incorporated as a part of the continuing care contract.

(B) With respect to the transfer of real property, a statement that the deed or other instrument of conveyance shall contain a recital that the transaction is made pursuant to a "continuing care contract" and may be subject to rescission by the transferor within 90 days from the date of the transfer.

(C) The failure to comply with paragraph (16) shall not affect the validity of title to real property transferred pursuant to this chapter.

(17) The amount of the entrance fee.

(18) In the event two parties have jointly paid the entrance fee or other payment which allows them to occupy the unit, the continuing care contract shall define the allocation of fees.

(19) The amount of any processing fee.

(20) The amount of any monthly care fee.

(21) For continuing care contracts which require a monthly care fee or other periodic rate, the continuing care contract shall provide statements concerning all of the following:

(A) That the occupancy and use of the accommodations by the resident is contingent upon the regular payment of the fee.

(B) The regular rate of payment agreed upon (per day, week, or month).

(C) Whether payment will be made in advance or after services have been provided.

(D) Whether any adjustment in the monthly care fees is to be made by the provider for the support, maintenance, board, or lodging, which is supplied to a resident who requires medical attention when he or she is absent from the continuing care retirement community.

(E) If any credit or allowance is to be given to a resident who is absent from the continuing care retirement community or from meals, and if such credit is to be permitted at the discretion or by special permission of the provider.

(22) All continuing care contracts shall specify one of the following basic methods for calculating changes in monthly care fees:

(A) For prepaid continuing care contracts, which include monthly care fees, one of the following methods:

(i) Fees shall not be subject to change during the lifetime of the agreement.

(ii) Fees shall not be increased by more than a specified number of dollars in any one year and not more than a specified number of dollars during the lifetime of the agreement.

(iii) Fees shall not be increased in excess of a specified percentage over the preceding year and not more than a specified percentage during the lifetime of the agreement.

(B) For monthly fee continuing care contracts, except prepaid contracts, changes in monthly fees shall be based on projected costs, prior year per capita costs, and economic indicators.

(23) The continuing care contract shall provide for notification of the resident at least 30 days in advance of any change in the scope or price of any component of care or other services.

(24) The continuing care contract shall include a provision indicating whether the resident's rights under the continuing care contract include any proprietary interests in the assets of the provider or in the continuing care retirement community, or both.

(25) If there is a loan on the property, the continuing care contract shall advise residents that rights they may have to enforce continuing care contracts are subordinate to the rights of the lender. For equity projects, the continuing care contract shall specify the type and extent of the equity interest and whether any entity holds a superior security interest.

(26) Notice that the living units are part of a continuing care retirement community that is licensed as a residential care facility for the elderly and, as such, any duly authorized agent of the department may, upon proper identification and upon stating the purpose of his or her visit, enter and inspect the entire premises at any time, without advance notice.

(27) A conspicuous statement, in at least 10-point boldface type in immediate proximity to the space reserved for the signature of the transferor, that provides as follows: "You, the transferor, may cancel the transaction without cause at any time within 90 days from the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(28) Notice that during the cancellation period, the continuing care contract may be canceled by the provider without cause.

(29) The terms and conditions under which the continuing care contract may be terminated after the cancellation period by either party, including any health or financial conditions.

(30) A statement that involuntary termination of the continuing care contract by the provider after the cancellation period shall be only for good and sufficient cause.

(A) Any continuing care contract containing a clause that provides for a resident to be evicted, or provides for a continuing care

contract to be canceled for "just cause," "good cause," or other similar provision, shall also include a provision that none of the following activities by the resident, or on behalf of the resident, constitutes "just cause," "good cause," or otherwise activates the eviction or cancellation provision:

(i) Filing or lodging a formal complaint with the department or other appropriate authority.

(ii) Participation in an organization or affiliation of residents, or other similar lawful activity.

(B) No provider shall discriminate or retaliate in any manner against any resident of a continuing care retirement community for contacting the department, or any other state, county, or city agency, or any elected or appointed government official to file a complaint or for any other reason, or for participation in a residents' coalition.

(C) Nothing in this provision shall diminish the provider's ability to terminate the continuing care contract for good and sufficient cause.

(31) A statement that at least 90 days' written notice is required for an involuntary termination of the continuing care contract.

(32) A statement concerning the length of notice that is required by a resident for the voluntary termination of the continuing care contract after the cancellation period.

(33) The policy for refunding any portion of the entrance fee, in the event of cancellation, termination, or death.

(34) The following notice at the bottom of the signatory page:

"NOTICE" (date)

This is a continuing care contract as defined by Section 1771(j) or 1771(w) of Chapter 10 of Division 2 of the California Health and Safety Code. This contract form has been approved by the State Department of Social Services as required by Section 1787(b) of the California Health and Safety Code. The basis for this approval was a determination that (provider name) has complied with specific requirements of the statutes. Approval by the department is neither a guaranty of performance nor an endorsement of contract provisions. Prospective transferors and residents are encouraged to carefully consider the benefits and risks of this contract before signing. You should seek financial and legal advice as needed.

(b) A life care contract shall also include all of the following:

(1) Provision to provide all levels of care, including acute care and physicians and surgeons' services to a resident.

(2) Provision to provide this care for the duration of the resident's life except for termination of the life care contract by the provider during the cancellation period or after the cancellation period for good cause.

(3) Provision to provide a comprehensive continuum of care, including skilled nursing, under the ownership and supervision of the provider on, or adjacent to, the continuing care retirement community premises.

(4) Provision that no change will be made in the monthly care fees based on the resident's level of care or service.

(5) Provision to subsidize residents who become financially unable to pay their monthly care fees provided that the resident's financial need did not arise from the action to divest themselves of their assets.

(c) The continuing care contract may include, but is not limited to, and need not include, any of the following items:

(1) Provision for a resident who becomes financially unable to pay for his or her monthly care fees at some future date to be subsidized. If provision for subsidizing a resident is included, the following provisions may be included:

(A) A stipulation that the resident shall apply for any public assistance or other aid for which eligible and that the provider may apply on behalf of the resident.

(B) A stipulation that the provider shall be the final and conclusive determining body of any adjustments to be made or any action to be taken regarding any charitable consideration to be extended to any of its residents.

(C) Provision for the payment or entitlement of actual costs of care from any property acquired by the resident subsequent to the adjustment, as provided in subparagraph (B), or from any property not disclosed by the resident at any time.

(D) Provision that the provider may pay the monthly premium of the resident's health insurance coverage under medicare to ensure that such payments will be made.

(E) Provision that the provider may receive an assignment from the resident of the right to apply for and to receive such benefits, for and on behalf of the resident.

(F) Provision that the provider is not responsible for the costs of furnishing the resident with any services, supplies, and medication, when reimbursement is available from any governmental agency.

(2) Provisions which limit responsibility for costs associated with the treatment or medication of an ailment or illness existing prior to the date of admission. In such cases, the medical or surgical exceptions, as disclosed by the medical entrance examination, shall be listed in the continuing care contract or in the medical report, which may be attached to and made a part of the continuing care contract.

(3) Legal remedies which may be applied in case any material misrepresentation or omission pertaining to assets or health has been made by the resident.

(4) A clause which restricts transfer or assignments of the resident's rights and privileges under a continuing care contract because of the personal nature of the continuing care contract.

(5) A clause for the protection of the provider in instances where it may wish to waive any of the terms or provisions of the continuing care contract in specific instances where the resident has breached the continuing care contract without relinquishment of its right to insist upon compliance by the resident with all of the other terms or provisions.

(6) Provision for the reimbursement of any loss or damage beyond normal wear and tear suffered by the provider as the result of carelessness or negligence on the part of the resident.

(7) Provision that the resident agrees to observe off-limit areas of the continuing care retirement community as designated by the provider for safety reasons. However, the provider shall not attempt to absolve itself in the continuing care contract from liability for its negligence by any statement to that effect.

(8) Provision for the subrogation to the provider of the resident's rights in the case of injury to a resident caused by the acts or omissions of a third party, or for the assignment of the resident's recovery or benefits in this case to the provider to the extent of the value of the goods and services furnished by the provider to or on behalf of the resident.

(9) Provision for a lien on any judgment, settlement, or recovery for any additional expense incurred by the provider in caring for the resident as a result of injury.

(10) Provision that requires the cooperation of the resident in assisting in the diligent prosecution of any claim or action against any third party.

(11) Provision for the appointment of a conservator or guardian by a court of competent jurisdiction in the event a resident becomes unable to handle his or her personal or financial affairs.

(12) Provision that, in the event a provider whose property is tax exempt is required to pay property taxes, or in-lieu taxes, the additional costs will be charged to the resident on a pro rata basis.

(13) Other provisions approved by the department.

(d) (1) A copy of the resident's bill of rights as described in Section 1771.5 shall be attached to every continuing care contract.

(2) A copy of the current audited financial statement of the provider shall be attached to every continuing care contract. For a provider whose current audited financial statement does not accurately reflect the financial ability of the provider to fulfill the continuing care contract promises, this requirement shall include supplemental statements or attachments that disclose all of the following:

(A) That the reserve requirement has not yet been determined or met, and that entrance fees will not be held in escrow.

(B) That the ability to provide the services promised in the continuing care contract will depend on successful compliance with the approved financial plan.

(C) The approved financial plan for meeting the reserve requirements.

(e) A schedule of the average monthly fees for each type of residential living unit charged to residents for each of the five years preceding execution of the continuing care contract shall be attached to every continuing care contract. This schedule shall be updated annually at the end of each fiscal year. If the continuing care retirement community has not been in existence for five years, the information shall be provided for each of the years the continuing care retirement community has been in existence.

(f) If any continuing care contract provides for a health insurance policy for the benefit of the resident, a binder under Sections 382 and 382.5 of the Insurance Code shall be attached to the continuing care contract.

(g) A completed form in duplicate, captioned "Notice of Cancellation" shall be attached to every continuing care contract. Such notice shall be easily detachable, and shall contain, in at least 10-point boldface type, the following statement:

"NOTICE OF CANCELLATION" (date)

(Enter date of transaction)

You may cancel this transaction, without any penalty within 90 calendar days from the above date.

If you cancel, any property transferred, any payments made by you under the contract, and any negotiable instrument executed by you will be returned within 14 calendar days after making possession of the living unit available to the provider, and any security interest arising out of the transaction will be canceled.

If you cancel, you are obligated for a reasonable processing fee to cover costs and the reasonable value of the services received by you from the provider up to the date you canceled or made available to the provider the possession of any living unit delivered to you under this contract, whichever is later.

If you cancel, you must return possession of any living unit delivered to you under this contract to the provider in substantially the same condition as when received.

Possession of the living unit must be made available to the provider within 20 calendar days of your notice of cancellation. If you fail to make the possession of any living unit available to the provider, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____
(Name of provider)

at _____
(Address of provider's place of business)

not later than midnight of _____ (date).

I hereby cancel this transaction _____
(Transferor's signature)

CHAPTER 950

An act to amend and renumber Sections 101800, 101805, 101810, 101815, and 101820 of, to amend and renumber the heading of Part 5 (commencing with Section 101800) of, and to add Part 6 (commencing with Section 101840) to Division 101 of, the Health and Safety Code, relating to public social services, and making an appropriation therefor.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

I am signing AB 27, which requires the California Health and Human Services Agency to prepare a long term care information infrastructure blueprint.

However, I am deleting the $149,000 General Fund appropriation from the bill and instead directing the Secretary of Health and Human Services Agency to implement the provisions of AB 27 within existing resources.

GRAY DAVIS, Governor

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

SECTION 1. The heading of Part 5 (commencing with Section 101800) of Division 101 of the Health and Safety Code is amended and renumbered to read:

PART 6. OTHER

SEC. 2. Section 101800 of the Health and Safety Code is amended and renumbered to read:

101980. This chapter shall be known and may be cited as the Voluntary Health Facility and Clinic Philanthropic Support Act.

SEC. 3. Section 101805 of the Health and Safety Code is amended and renumbered to read:

101983. The Legislature finds and declares that, while there continues to be a need to focus on the deficiencies in the health care system and on corrective reform measures that might be taken, there is also need for focus on the enhancement of its strengths. Existing philanthropic support for health facilities and clinics is a strength that must be preserved and enhanced under any reform measure for all of the following reasons:

(a) Philanthropy imbues members of the community with a sense of pride in their voluntary nonprofit health facilities and clinics and creates a setting in which members of the community are willing to devote time and effort to improve health care available in the community in a way that government regulation could never replace.

(b) Philanthropy allows voluntary nonprofit institutions to conduct research and to engage in other innovative efforts to improve health care in California.

(c) Philanthropy provides required discretionary dollars for voluntary nonprofit institutions, that, in part, substitute for the absence of profits.

(d) Philanthropy allows hospitals to replace worn out and obsolete facilities when, in a period of high inflation, historical costs accumulated through depreciation are totally insufficient to provide for the replacement.

(e) Philanthropy pays for necessary expenditures that otherwise would have to be paid by patients or by government.

(f) Philanthropy may be discouraged by certain shortsighted actions of administrative agencies that, while purporting to serve a short-term purpose, seriously deter the vast benefits to the health care field inuring directly from philanthropy and voluntarism.

(g) Recent amendments to the federal tax laws to broaden the use of the standard deduction also have the effect of eliminating important incentives for philanthropy.

SEC. 4. Section 101810 of the Health and Safety Code is amended and renumbered to read:

101985. It is, therefore, the intent of the Legislature to create an environment in which philanthropy and voluntarism in the health care field and the vast benefits arising from it for the citizens of California can be encouraged. The Legislature hereby declares it to be the policy of this state that philanthropic support for health care be encouraged and expanded, especially in support of experimental and innovative efforts to improve the health care delivery system.

SEC. 5. Section 101815 of the Health and Safety Code is amended to read:

101987. For purposes of any state law, whether enacted before or on or after January 1, 1980, that in any manner provides for regulation, review, or reporting of the budget, rates, or revenues of

health facilities, as defined in Section 1250, or clinics, as defined in Section 1204, including the provisions of Part 1.7 (commencing with Section 440), none of the following shall be treated directly, or indirectly, as revenues allocable to the cost of care provided by the health facility or clinic:

(a) A donor-designated or restricted grant, gift, endowment, or income therefrom, as defined in Section 405.423(b) of Title 42 of the Code of Federal Regulations, insofar as permitted by federal law.

(b) A grant or gift, or income from a grant or gift, that is not available for use as operating funds because of its designation by the governing board or entity of the health facility or clinic.

(c) A grant or similar payment that is made by a governmental entity and that is not available, under the terms of the grant or payment, for use as operating funds.

(d) Amounts attributable to the sale or mortgage of any real estate or other capital assets of the health facility or clinic that it acquired through a gift or grant, and that are not available for use as operating funds under the terms of the gift or grant or because of designation as provided in subdivision (b).

(e) A depreciation fund that is created by the health facility or clinic in order to meet a condition imposed by a third party for the third party's financing of a capital improvement of the health facility or clinic, provided the fund is used exclusively to make payments to the third party for the financing of the capital improvement.

(f) Funds used to defray the expense of fundraising.

SEC. 6. Section 101820 of the Health and Safety Code is amended and renumbered to read:

101989. No state law shall be construed to discourage philanthropic support of health facilities and clinics, or to otherwise hinder the use of this support for purposes determined by the recipients to be in the best interests of the physicians and patients it serves.

However, in enacting this chapter and Section 14106.2 of the Welfare and Institutions Code, the Legislature does not intend to place any restrictions on cost containment measures relating to health facilities that may be enacted in the future.

SEC. 7. Part 5 (commencing with Section 101950) is added to Division 101 of the Health and Safety Code, to read:

PART 5. LONG-TERM CARE INFRASTRUCTURE BLUEPRINT

101950. (a) The California Health and Human Services Agency shall develop a long-term care infrastructure blueprint to analyze how information technology could be utilized to do all of the following:

(1) Provide consistent information and referrals to consumers' requests for information on long-term care service availability and eligibility requirements.

(2) Develop a core client services record that contains key assessment and care planning information.

(3) Transmit core client information from one agency to another when making a service referral.

(4) Create a long-term care data warehouse at state level to facilitate state and regional long-term care strategic planning, development, and evaluation.

(b) The blueprint developed shall include all of the following:

(1) A technical analysis of the data currently being collected by public long-term care programs.

(2) An evaluation of the information technology currently available to accomplish tasks specified in subdivision (a).

(3) A cost-benefit analysis of the information technology options identified.

(4) A proposal of incremental steps, and the corresponding budgetary outlays, required to develop the long-term care information infrastructure.

(c) The agency shall contract with a consulting firm that has been successful in assisting other states in undertaking similar infrastructure building endeavors, or that can demonstrate comparable experience, for preparation of the technical analysis.

(d) The agency shall ensure that the planning, development, and implementation of changes that occur as a result of this section encourage and allow concurrent implementation and operation of a long-term care integration pilot project consistent with Article 4.3 (commencing with Section 14139.05) of Chapter 7 of Part 3 of Division 9.

(e) The agency shall report to the Legislature, in writing, on or before January 1, 2001, regarding the results of the technical analysis and the progress made on the development of the long-term care infrastructure blueprints.

(f) The sum of one hundred forty-nine thousand dollars ($149,000) is hereby appropriated from the General Fund to the California Health and Human Services Agency for the purpose of providing funds to contract with an outside consultant who shall be responsible for preparing the long-term care infrastructure blueprint and technical analysis of infrastructure development costs required by this section.

CHAPTER 951

An act to add and repeal Section 14669.7 of the Government Code, relating to state property.

[Approved by Governor October 10, 1999. Filed with
Secretary of State October 10, 1999.]

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

SECTION 1. Section 14669.7 is added to the Government Code, to read:

14669.7. (a) The director shall study the purchase, exchange, or acquisition of real property and the construction of facilities in the County of Fresno, for use by the Department of Transportation and other state agencies. The study shall include an evaluation of options to finance the facilities. The department shall consider the placement of the facilities on a site that permits future expansion of the facilities described by this section, if evaluations of future workload indicates that future expansion of the facilities may be warranted.

(b) The study shall assume that the net present value of the cost to acquire and operate the facilities described in this section may not exceed the net present value of the cost to lease and operate an equivalent amount of comparable office space over the same time period. The department shall perform this analysis and shall obtain interest rates, discount rates, and consumer price index figures from the Treasurer. For purposes of this analysis, the department shall compare the cost of acquiring and operating an equivalent amount of comparable office space that will no longer need to be leased because the agencies will no longer occupy currently leased facilities when they occupy the proposed facilities.

(c) Notwithstanding Section 7550.5 of the Government Code, the director shall submit the study described in this section to the Legislature on or before July 1, 2000.

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

CHAPTER 952

An act to amend Sections 3583 and 3585 of, and to add Sections 3583.5 and 3584 to, the Government Code, relating to higher education labor relations.

[Approved by Governor October 10, 1999. Filed with
Secretary of State October 10, 1999.]

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

SECTION 1. Section 3583 of the Government Code is amended to read:

3583. Permissible forms of organizational security shall be limited to either of the following:

(a) An arrangement pursuant to which an employee may decide whether or not to join the recognized or certified employee organization, but which requires the employer to deduct from the wages or salary of any employee who does join, and pay to the employee organization which is the exclusive representative of that employee, the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the written memorandum of understanding. This arrangement shall not deprive the employee of the right to resign from the employee organization within a period of 30 days prior to the expiration of a written memorandum of understanding.

(b) The arrangement described in Section 3583.5.

SEC. 2. Section 3583.5 is added to the Government Code, to read:

3583.5. (a) (1) Notwithstanding any other provision of law, any employee of the California State University or the University of California, other than faculty of the University of California who are eligible for membership in the Academic Senate, who is in a unit for which an exclusive representative has been selected pursuant to this chapter, shall be required, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Upon notification to the employer by the exclusive representative, the amount of the fee shall be deducted by the employer from the wages or salary of the employee and paid to the employee organization.

(2) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and conferring with the higher education employer.

(b) The organizational security arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (c). The higher education employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(c) (1) The organizational security arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the negotiating unit, the

signatures are obtained in one academic year, and the vote is conducted at the worksite by secret ballot. There shall not be more than one vote taken during the term of any memorandum of understanding in effect on or after January 1, 2000.

(2) If the organizational security arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all the employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the organizational security arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to rescind or reinstate the organizational security arrangement shall be borne by the petitioning party.

SEC. 3. Section 3584 is added to the Government Code, to read:

3584. (a) Notwithstanding Section 3583.5, an employee of the California State University or the University of California, other than faculty of the University of California who are eligible for membership in the Academic Senate, who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations, shall not be required to join or financially support any public employee organization as a condition of employment. An employee to which this subdivision is applicable may be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal to the amount of the fair share service fee determined pursuant to subdivision (a) of Section 3583.5 to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three of these funds designated by the employer and the exclusive representative or, if the employer and exclusive representative fail to designate funds, chosen by the employee. Proof of these payments shall be made on a monthly basis to the employer as a condition of continued exemption from the requirement of financial support of the exclusive representative.

(b) Every recognized or certified employee organization that has an agency shop provision under this section shall keep an adequate itemized record of its financial transactions, and shall make available annually, to the employer and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by the

president and treasurer or comparable officers. An employee organization covering employees governed under this chapter and required to file financial reports under the federal Labor-Management Disclosure Act of 1959 (29 U.S.C. Sec. 401 et seq.) , or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirements of this section by providing the employer with a copy of those financial reports.

SEC. 4. Section 3585 of the Government Code is amended to read:

3585. In the absence of an arrangement pursuant to Section 3583 or 3583.5, an employer shall, upon written authorization by the employee involved, deduct and remit to the exclusive representative or, in the absence of an exclusive representative, to the employee organization of the employee's choice, the standard initiation fee, periodic dues, and general assessments of that organization, until the time an exclusive representative has been selected for the employee's unit. Thereafter, deductions shall be made only for the exclusive representative.

SEC. 5. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 953

An act to amend, repeal, and add Section 68120 of, and to repeal Section 68121 of, the Education Code, relating to public postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 68120 of the Education Code is amended to read:

68120. (a) Notwithstanding any other provision of law, no mandatory systemwide fees or tuition of any kind shall be required of or collected by the Regents of the University of California, the Board of Directors of the Hastings College of the Law, or the Trustees of the California State University from any surviving child, natural or adopted, of a deceased person who met all of the following requirements:

(1) Was a resident of this state.

(2) Was employed by a public agency, or was a contractor, or an employee of a contractor, performing services for a public agency.

(3) His or her principal duties consisted of active law enforcement service or active fire suppression and prevention. This section shall not apply to a person whose principal duties were clerical, even if he or she was subject to occasional call or was occasionally called upon to perform duties within the scope of active law enforcement or active fire suppression and prevention.

(4) Was killed in the performance of active law enforcement or active fire suppression and prevention duties or died as a result of an accident or an injury caused by external violence or physical force, incurred in the performance of his or her active law enforcement or active fire suppression and prevention duties.

(b) As used in this section, "public agency" means the state or any city, county, district, or other local authority or public body of or within the state.

(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. 2. Section 68120 is added to the Education Code, to read:

68120. (a) Notwithstanding any other provision of law, no mandatory systemwide fees or tuition of any kind shall be required of or collected by the Regents of the University of California, the Board of Directors of the Hastings College of the Law, or the Trustees of the California State University from any surviving child, natural or adopted, of a deceased person who met all of the following requirements:

(1) Was a resident of this state.

(2) Was employed by a public agency.

(3) His or her principal duties consisted of active law enforcement service or active fire suppression and prevention. This section shall not apply to a person whose principal duties were clerical, even if he or she was subject to occasional call or was occasionally called upon to perform duties within the scope of active law enforcement or active fire suppression and prevention.

(4) Was killed in the performance of active law enforcement or active fire suppression and prevention duties or died as a result of an accident or an injury caused by external violence or physical force, incurred in the performance of his or her active law enforcement or active fire suppression and prevention duties.

(b) As used in this section, "public agency" means the state or any city, county, district, or other local authority or public body of or within the state.

(c) This section shall become operative on January 1, 2002.

SEC. 3. Section 68121 of the Education Code is repealed.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

So that the surviving children of contractors or of the employees of contractors who died while providing essential service to the people of this state may have their mandatory systemwide tuition and fees excused as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 954

An act relating to public postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 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) Nationally, California ranks last among the 50 states in the proportion of registered nurses per 100,000 population.

(2) California is experiencing a nursing shortage that could have serious consequences for the delivery of health care in the state.

(3) The average age of registered nurses in California is 46 years. Retirements are increasing each year, while the number of new nurse graduates is stable.

(4) As the baby boom population ages, the need for a larger nursing work force will increase dramatically.

(5) Waiting times for students who are interested in enrolling in nursing programs are unacceptably long and are not consistent with the needs of the state.

(6) The state has used alternative strategies in other professions experiencing shortages, including the teaching profession, and has used methods such as increasing full-time equivalent student funding, grants, and loan forgiveness programs.

(b) It is the intent of the Legislature that both of the following occur:

(1) (A) The Chancellor of the California Community Colleges, the Chancellor of the California State University, the President of the University of California, and the President of the Association of Independent Colleges and Universities shall jointly develop a plan and budget for both of the following:

(i) Significantly increasing the number of students graduating from nursing programs in the State of California.

(ii) Providing specialty training to licensed nurses, including training in the nursing specialty areas of critical care, emergency, obstetrics, pediatrics, neonatal intensive care, and operating room nursing.

(B) A representative from a hospital-based, board-approved nursing program shall be invited to participate in the development of a plan and budget pursuant to this paragraph.

(2) In the development of a plan pursuant to this subdivision, the offices of the Chancellor of the California Community Colleges, the Chancellor of the California State University, the President of the University of California, and the President of the Association of Independent Colleges and Universities shall jointly form an advisory committee, composed of representatives of the Board of Registered Nursing, the Licensing Division of the State Department of Health Services, organizations representing licensed nurses, organizations representing hospitals, long-term care facilities, and other employers of registered nurses, the California Strategic Planning Committee on Nursing, professional nursing organizations, hospital-based board-approved nursing programs, and other interested groups.

SEC. 2. Notwithstanding Section 7550.5 of the Government Code, on or before April 1, 2000, the Chancellor of the Community Colleges, the Chancellor of the California State University, the President of the University of California, and the President of the Association of Independent Colleges and Universities shall jointly submit a report to the Governor and the Legislature. The report shall contain a recommended plan, that may include alternative strategies, and budget for both of the following:

(a) Significantly increasing the number of students graduated from nursing programs in order to meet the state's current and future needs of licensed nursing personnel.

(b) Providing specialty training programs for licensed nurses, including, but not necessarily limited to, the nursing specialty areas set forth in Section 1, to registered nurses.

SEC. 3. This act shall apply to the University of California only to the extent that the Regents of the University of California, by resolution, make it applicable.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that there will be a sufficient number of nurses in the immediate future to care for the public of the State of California, it is necessary that this act take effect immediately.

CHAPTER 955

An act to amend Sections 54685, 54685.1, 54681.2, 54685.3, 54685.7, 54685.9, 54686, and 54686.2 of the Education Code, relating to the Early Intervention for School Success Program.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 54685 of the Education Code is amended to read:

54685. (a) The Legislature finds that many public school pupils enrolled in preschool, kindergarten, and grades 1 and 2 arrive at school with a wide variety of abilities and experiences that will influence the degree of their school success. In order for all pupils to meet the expectations of state standards, early intervention is necessary for many pupils to prevent them from being retained in a grade and failing in school.

(b) The development of reading and literacy skills is a priority for the education of all pupils and early intervention is necessary for many pupils to be successful readers.

(c) The Legislature also finds and declares that there is a need to do all of the following:

(1) To establish a system to assess pupils in preschool, kindergarten, and grades 1 and 2 that measures their instructional levels and adapts instruction to prevent school failure, thus increasing achievement of state standards.

(2) To implement appropriate instructional programs that reduce the frequency and severity of learning problems for these pupils in later years.

(3) To reduce the likelihood that these pupils eventually will need to be placed in remedial programs with higher costs.

(4) To help schools adjust curriculum and instruction to meet the needs of these pupils to increase their achievement of state standards.

(5) To provide comprehensive parent education that defines home activities that support pupil learning.

(d) The Legislature further finds and declares that the Early Intervention for School Success Program is a model capable of providing a comprehensive range of training materials and services to accurately assess individual pupil instructional and developmental levels, provide information and strategies to enhance the development of reading and literacy skills for all pupils, provide comprehensive parent education resources, expand the knowledge and skills of school personnel to deliver appropriate interventions that will increase pupil achievement of state standards, and reduce the need for remedial programs for pupils in preschool, kindergarten, and grades 1 and 2.

SEC. 2. Section 54685.2 of the Education Code is amended to read:

54685.2. The Orange County Superintendent of Schools, having been selected by the Superintendent of Public Instruction, shall continue to manage the implementation of the Early Intervention

for School Success Program pursuant to the management plan described in Section 54683.5.

SEC. 3. Section 54685.3 of the Education Code is amended to read:

54685.3. The management plan required by this section shall include the following activities:

(a) Implementation of the program at 300 public schoolsites within the state between July 1, 1999, and June 30, 2004.

(b) The dissemination of program information.

(c) The awarding of competitive grants to schools representative of the ethnic, socioeconomic, and geographic diversity of the public school system.

(d) Provisions for training, materials, parent education, and technical assistance.

(e) Adaptation of the Early Intervention for School Success Program to meet state and local standards, the goals of the California Reading Initiative, and the expectations of class size reduction legislation, including identification of existing materials and development of new materials, if needed.

(f) Development of a statewide support network.

(g) Selection of successful sites as demonstration models for inclusion in a statewide network.

(h) Certification of one teacher for each funded schoolsite to serve as a local trainer.

(i) The provision of continued professional development instruction in prevention and early intervention methods based on research and exemplary practice.

(j) The training of school personnel in the skills necessary to determine instructional levels of pupils based on a continuous assessment of pupils performance that is validated and supported by the use of multiple assessment techniques. For purposes of this section, ''multiple assessment techniques'' includes, but is not limited to, teacher observation, anecdotal records, norm referenced tests, and criterion referenced tests.

(k) Provision for an annual program progress report and program evaluation by the Orange County Superintendent of Schools to be submitted to the State Department of Education.

SEC. 4. Section 54685.7 of the Education Code is amended to read:

54685.7. The criteria to be used in selecting schoolsites as participants shall be based on the extent to which the school demonstrates all of the following:

(a) A need for the program.

(b) The ability and commitment to disseminate the model program, to serve as a model site, to release a teacher certified as a trainer in the program, to collect evaluation data, and to continue to employ the program after termination of state funding.

SEC. 5. Section 54685.9 of the Education Code is amended to read:

54685.9. The techniques that shall be included in the Early Intervention for School Success Program include all of the following:

(a) The use of a collaborative school team approach to plan instruction based on an initial assessment of each pupil validated and supported through ongoing multiple assessment techniques of the instructional learning needs of pupils in preschool, kindergarten, and grades 1 and 2.

The results of these observations and assessments shall not be used to deny or delay school admissions or to track pupils.

(b) The selection and application of educational materials and instructional strategies that are appropriate to pupils' instructional levels and individual learning needs. These materials and strategies will be selected with the purpose of providing an active and appropriate learning environment that will be consistent with current research and the California Reading Initiative.

(c) The development and management of classroom environments, consistent with class size reduction legislation, that encourage and motivate pupils to succeed.

(d) The implementation of interventions and appropriate differentiated instruction that prevents reading failure.

SEC. 6. Section 54686 of the Education Code is amended to read:

54686. Training received by a teacher in techniques for the Early Intervention for School Success Program shall apply toward the requirement of professional growth, as required by subdivision (b) of Section 44277 and is consistent with the California Standards for the Teaching Profession developed by the Commission on Teacher Credentialing.

SEC. 7. Section 54686.2 of the Education Code is amended to read:

54686.2. This article shall become inoperative on July 1, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 956

An act relating to motor vehicle fuel industry practices, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

I am signing Senate Bill No. 1131, encouraging the Department of Justice to investigate the practices of the motor vehicle fuel industry related to the production, distribution and pricing of gasoline and diesel fuel.

However, I am deleting the $1 million General Fund appropriation from the bill and instead ask the Attorney General to implement the provisions of SB 1131 within existing resources. The 1999 Budget Act contains $3.2 million for the Department of Justice's Antitrust workload, which includes a $667,000 General Fund augmentation to address such expected workload increases.

GRAY DAVIS, Governor

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

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

(a) The conduct of modern society relies on gasoline and diesel-powered motor vehicles.

(b) Geographic and environmental considerations make California a unique and isolated market for petroleum products.

(c) Because gasoline demand is inelastic and gasoline supplies are tight, even a small decrease in supply can cause significant price increases.

(d) Motor vehicle fuel prices in California rose steeply in the spring of 1999. The commonly held belief is that a series of refinery production problems, and resultant market speculation, caused the price increases. To date, the nature of the production problems has been neither fully nor publicly disclosed.

(e) Motor vehicle fuel prices continue to be high even though the refinery production problems have been abated for weeks.

(f) These price behaviors have raised questions about competitive conditions in the motor vehicle fuel industry in California.

(g) Two proposed mergers of four large, integrated oil companies have recently been announced. In addition, news reports indicate that two other large, integrated oil companies are discussing a potential merger. Each of these potential mergers could have a significant impact on competitive conditions in the motor vehicle fuel market in California.

(h) The recent dramatic increase in motor vehicle fuel retail prices has cost California residents and businesses hundreds of millions of dollars and the pending mergers may cost California consumers even more if they lessen competition.

(i) Because of the timing of these proposed mergers, the pending investigations of the federal antitrust enforcement agency, and the unnecessary cost to consumers of the recent motor vehicle fuel price hikes, it is essential that the California Attorney General conduct investigations into these matters.

(j) The demands of these investigations require additional resources beyond those provided in the annual budget of the California Department of Justice.

(k) Therefore, the Legislature hereby declares that adequate funds should be immediately appropriated from the General Fund to the California Department of Justice for these purposes.

SEC. 2. The amount of one million dollars ($1,000,000) is hereby appropriated from the General Fund to the Department of Justice for the purpose of supporting first-year costs of investigating industry practices relevant to the production, distribution, and pricing of gasoline and diesel fuel. The funds appropriated by this section may also be used to support first-year costs related to reviewing pending mergers between major oil companies that also impact the consumers of California.

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 for an immediate investigation or review of possible anticompetitive practices and mergers that could be harmful to consumers and the general economy of the state, it is necessary that this act take effect immediately.

CHAPTER 957

An act to amend Section 3058.6 of, and to add Sections 3058.4 and 3058.9 to, the Penal Code, relating to child protective services.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 3058.4 is added to the Penal Code, to read:

3058.4. (a) All parole officers shall report to the appropriate child protective agency if a person paroled following a conviction of Section 273a, 273ab, or 273d, or any sex offense identified in statute as being perpetrated against a minor, has violated the terms or conditions of parole related specifically to restrictions on contact with the victim or the victim's family.

(b) The Department of Corrections shall annually provide to all parole officers a written summary describing the legal duties of parole officers to report information to local child protective agencies as required by Section 11166 and this section.

SEC. 2. Section 3058.6 of the Penal Code is amended to read:

3058.6. (a) Whenever any person confined to state prison is serving a term for the conviction of a violent felony listed in subdivision (c) of Section 667.5, the Board of Prison Terms, with respect to inmates sentenced pursuant to subdivision (b) of Section 1168 or the Department of Corrections, with respect to inmates

sentenced pursuant to Section 1170, shall notify the sheriff or chief of police, or both, and the district attorney, who has jurisdiction over the community in which the person was convicted and, in addition, the sheriff or chief of police, or both, and the district attorney, having jurisdiction over the community in which the person is scheduled to be released on parole or rereleased following a period of confinement pursuant to a parole revocation without a new commitment.

(b) (1) The notification shall be made by mail at least 45 days prior to the scheduled release date, except as provided in paragraph (3). In all cases, the notification shall include the name of the person who is scheduled to be released, whether or not the person is required to register with local law enforcement, and the community in which the person will reside. The notification shall specify the office within the Department of Corrections with the authority to make final determination and adjustments regarding parole location decisions.

(2) Notwithstanding any other provision of law, the Department of Corrections shall not restore credits nor take any administrative action resulting in an inmate being placed in a greater credit earning category that would result in notification being provided less than 45 days prior to an inmate's scheduled release date.

(3) When notification cannot be provided within the 45 days due to the unanticipated release date change of an inmate as a result of an order from the court, an action by the Board of Prison Terms, the granting of an administrative appeal, or a finding of not guilty or dismissal of a disciplinary action, that affects the sentence of the inmate, or due to a modification of the department's decision regarding the community into which the person is scheduled to be released pursuant to paragraph (4), the department shall provide notification as soon as practicable, but in no case less than 24 hours after the final decision is made regarding where the parolee will be released.

(4) Those agencies receiving the notice referred to in this subdivision may provide written comment to the board or department regarding the impending release. Agencies that choose to provide written comments shall respond within 30 days prior to the inmate's scheduled release, unless an agency received less than 45 days' notice of the impending release, in which case the agency shall respond as soon as practicable prior to the scheduled release. Those comments shall be considered by the board or department which may, based on those comments, modify its decision regarding the community in which the person is scheduled to be released. The Department of Corrections shall respond in writing not less than 15 days prior to the scheduled release with a final determination as to whether to adjust the parole location and documenting the basis for its decision, unless the department received comments less than 30 days prior to the impending release, in which case the department

shall respond as soon as practicable prior to the scheduled release. The comments shall become a part of the inmate's file.

(c) If the court orders the immediate release of an inmate, the department shall notify the sheriff or chief of police, or both, and the district attorney, having jurisdiction over the community in which the person was convicted and, in addition, the sheriff or chief of police, or both, and the district attorney, having jurisdiction over the community in which the person is scheduled to be released on parole at the time of release.

(d) The notification required by this section shall be made whether or not a request has been made under Section 3058.5.

In no case shall notice required by this section to the appropriate agency be later than the day of release on parole. If, after the 45-day notice is given to law enforcement and to the district attorney relating to an out-of-county placement, there is change of county placement, notice to the ultimate county of placement shall be made upon the determination of the county of placement.

SEC. 3. Section 3058.9 is added to the Penal Code, to read:

3058.9. Whenever any person confined to state prison is serving a term for the conviction of child abuse pursuant to Section 273a, 273ab, 273d, or any sex offense identified in statute as being perpetrated against a minor victim, or as ordered by any court, the Board of Prison Terms, with respect to inmates sentenced pursuant to subdivision (b) of Section 1168 or the Department of Corrections, with respect to inmates sentenced pursuant to Section 1170, shall notify the sheriff or chief of police, or both, and the district attorney, having jurisdiction over the community in which the person was convicted and, in addition, the sheriff or chief of police, or both, and the district attorney having jurisdiction over the community in which the person is scheduled to be released on parole or rereleased following a period of confinement pursuant to a parole revocation without a new commitment.

(b) (1) The notification shall be made by mail at least 45 days prior to the scheduled release date, except as provided in paragraph (3). In all cases, the notification shall include the name of the person who is scheduled to be released, whether or not the person is required to register with local law enforcement, and the community in which the person will reside. The notification shall specify the office within the Department of Corrections with the authority to make final determination and adjustments regarding parole location decisions.

(2) Notwithstanding any other provision of law, the Department of Corrections shall not restore credits nor take any administrative action resulting in an inmate being placed in a greater credit earning category that would result in notification being provided less than 45 days prior to an inmate's scheduled release date.

(3) When notification cannot be provided within the 45 days due to the unanticipated release date change of an inmate as a result of

an order from the court, an action by the Board of Prison Terms, the granting of an administrative appeal, or a finding of not guilty or dismissal of a disciplinary action, that affects the sentence of the inmate, or due to a modification of the department's decision regarding the community into which the person is scheduled to be released pursuant to paragraph (4), the department shall provide notification as soon as practicable, but in no case less than 24 hours after the final decision is made regarding where the parolee will be released.

(4) Those agencies receiving the notice referred to in this subdivision may provide written comment to the board or department regarding the impending release. Agencies that choose to provide written comments shall respond within 30 days prior to the inmate's scheduled release, unless an agency received less than 45 days' notice of the impending release, in which case the agency shall respond as soon as practicable prior to the scheduled release. Those comments shall be considered by the board or department, which may, based on those comments, modify its decision regarding the community in which the person is scheduled to be released. The Department of Corrections shall respond in writing not less than 15 days prior to the scheduled release with a final determination as to whether to adjust the parole location and documenting the basis for its decision, unless the department received comments less than 30 days prior to the impending release, in which case the department shall respond as soon as practicable prior to the scheduled release. The comments shall become a part of the inmate's file.

(c) If the court orders the immediate release of an inmate, the department shall notify the sheriff or chief of police, or both, and the district attorney, having jurisdiction over the community in which the person was convicted and, in addition, the sheriff or chief of police, or both, and the district attorney, having jurisdiction over the community in which the person is scheduled to be released on parole or released following a period of confinement pursuant to a parole revocation without a new commitment.

(d) The notification required by this section shall be made whether or not a request has been made under Section 3058.5.

In no case shall notice required by this section to the appropriate agency be later than the day of release on parole. If, after the 45-day notice is given to law enforcement and to the district attorney relating to an out-of-county placement, there is change of county placement, notice to the ultimate county of placement shall be made upon the determination of the county of placement.

(5) The notice required by this section shall satisfy the notice required by Section 3058.6 for any person whose offense is identified in both sections.

CHAPTER 958

An act relating to school instruction.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. (a) A residential outdoor science program shall be eligible for funding pursuant to this act if it meets both of the following conditions:

(1) It is operated by a school district or county office of education pursuant to Article 5 (commencing with Section 8760) of Chapter 4 of Part 6 of the Education Code.

(2) It meets the standards of the Residential Outdoor Science School (ROSS) Guide and maintains current California Department of Education ROSS certification.

(b) An eligible residential outdoor science program may claim apportionment for any pupil who meets all of the following conditions:

(1) The pupil is enrolled in a California public school.

(2) The pupil is enrolled in the fifth or sixth grade.

(3) The applicant has not previously received funding for the pupil pursuant to this act.

(4) The pupil participates in a minimum four day and three night program.

(5) The pupil is economically disadvantaged and meets the criteria of Section 49552 of the Education Code.

(c) The Superintendent of Public Instruction shall, subject to appropriation of funds for this purpose, apportion to each school district or county office of education that operates a residential outdoor science program pursuant to Article 5 (commencing with Section 8760) of Chapter 4 of Part 6 of the Education Code an amount equal to ten dollars ($10), per eligible participating pupil multiplied by the total number of days of participation, up to a maximum of five days.

(d) The purpose of this act is to implement the Budget Act of 1999.

CHAPTER 959

An act to augment Item 6870-101-0001 of Section 2.00 of the Budget Act of 1999, relating to community colleges, and making an appropriation therefor.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

I am signing Senate Bill No. 213. However, I am deleting the $4,000,000 appropriation for the Puente Project and the Extended Opportunity Programs and Services (EOPS).

I previously vetoed augmentations of $3.36 million for the Puente Project and $5 million to EOPS from the Budget Act of 1999. In doing so, I noted that the $45 million augmentation to the Partnership for Excellence program could be used for these purposes at local discretion. While I appreciate the merits of these programs, I note that the state has recently made a significant investment of $145 million in the Partnership for Excellence, which allows each district to invest in these and other programs based on local need.

GRAY DAVIS, Governor

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

SECTION 1. (a) The sum of one million fifty thousand dollars ($1,050,000) is hereby appropriated from the General Fund to the Board of Governors of the California Community Colleges in augmentation of Item 6870-101-0001 of Section 2.00 of the Budget Act of 1999 (Ch. 50, Stats. 1999), for allocation for the establishment, commencing January 1, 2000, of 17 Mexican International Trade Centers for the purposes of increasing Mexican export opportunities for California. These centers shall be administered through the California Community Colleges Centers for International Trade Development. The 17 trade centers to be funded under this section are as follows:

(1) Butte College-Chico
(2) Citrus College-Pomona
(3) Coastline Community College-Fountain Valley
(4) El Camino College-Torrance
(5) Fresno City College-Clovis
(6) Gavilan College-Gilroy
(7) Los Angeles Trade Tech-Los Angeles
(8) Long Beach City College-Long Beach
(9) Merced College-Merced
(10) Oxnard College-Oxnard
(11) Riverside Community College-Riverside
(12) Sacramento City College-Sacramento
(13) Skyline College-South San Francisco
(14) Southwestern College-Los Angeles
(15) Vista College-Oakland
(16) West Valley Mission College-Sunnyvale
(17) Southwestern Community College-Chula Vista

(b) The sum of four million dollars ($4,000,000) is appropriated from the General Fund for the 1999–2000 fiscal year in accordance with the following schedule:

(1) Two million dollars ($2,000,000) to the Board of Governors of the California Community Colleges for allocation for local assistance in augmentation of Schedule (f) of Item 6870-101-0001 of Section 2.00 of the Budget Act of 1999 for the purposes of the Extended Opportunity Programs and Services.

(2) Two million dollars ($2,000,000) to the Board of Governors of the California Community Colleges for allocation for local assistance in augmentation of Schedule (h) of Item 6870-101-0001 of Section 2.00 of the Budget Act of 1999 for the purposes of the Community Colleges Puente Project.

CHAPTER 960

An act to amend Sections 425.16 and 904.1 of the Code of Civil Procedure, relating to civil actions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 425.16 of the Code of Civil Procedure is amended to read:

425.16. (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b) (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination.

(c) In any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the

court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be noticed for hearing not more than 30 days after service unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) On or before January 1, 1998, the Judicial Council shall report to the Legislature on the frequency and outcome of special motions made pursuant to this section, and on any other matters pertinent to the purposes of this section.

(j) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(k) (1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or fax, a copy of the endorsed-filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant

to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

SEC. 2. Section 904.1 of the Code of Civil Procedure is amended to read:

904.1. (a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

(1) From a judgment, except (A) an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), (B) a judgment of contempt that is made final and conclusive by Section 1222, or (C) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or the superior court in a county in which there is no municipal court or the judge or judges thereof that relates to a matter pending in the municipal or superior court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.

(2) From an order made after a judgment made appealable by paragraph (1).

(3) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(4) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(5) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(7) From an order appointing a receiver.

(8) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(9) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(10) From an order made appealable by the provisions of the Probate Code or the Family Code.

(11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).

(12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).

(13) From an order granting or denying a special motion to strike under Section 425.16.

(b) Sanction orders or judgments of five thousand dollars ($5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.

SEC. 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 protect the constitutional rights of individuals to free speech, it is necessary that this act take effect immediately.

CHAPTER 961

An act to add Article 1.7 (commencing with Section 7270) to Chapter 1 of Part 4 of Division 4 of the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

I am signing Assembly Bill 1168, which creates the Noxious Weed Management Account and establishes a new local mechanism to address the eradication of noxious weeds.

However, I am reducing the appropriation in the bill from $500,000 to $200,000 per year for the 1999–2000, 2000–01, and 2001–02 fiscal years.

GRAY DAVIS, Governor

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

SECTION 1. Article 1.7 (commencing with Section 7270) is added to Chapter 1 of Part 4 of Division 4 of the Food and Agricultural Code, to read:

Article 1.7. Noxious Weeds Management

7270. The Legislature finds and declares all of the following:

(a) The destructive impact of invasive and often poisonous noxious weeds is profound, affecting California's cropland, rangeland, forest, and parkland.

(b) These pests cause enormous losses of private, state, and federal resources through decreased land productivity, degradation of

wildlife habitat, and outright destruction of crops, livestock, wetlands, waterways, watersheds, and recreational areas.

(c) These noxious weeds include, but are not limited to, yellow star thistle, purple loosestrife, leafy spurge, spotted knapweed, musk thistle, and puncture vine.

(d) The estimated lost crop productivity caused by noxious weeds is seven billion four hundred million dollars ($7,400,000,000) nationwide, a large proportion of which is attributable to California. Nationally, the direct and indirect costs of controlling noxious weeds may be as high as five billion four hundred million dollars ($5,400,000,000) annually.

7271. (a) The Legislature designates the Department of Food and Agriculture as the lead department in noxious weed management and the department is responsible for the implementation of this article in cooperation with the Secretary for Resources.

(b) There is hereby created in the Department of Food and Agriculture Fund the Noxious Weed Management Account.

(c) The sum of five hundred thousand dollars ($500,000) is hereby appropriated for each of the following three fiscal years from the General Fund to the account for the 1999–2000, 2000–01, and 2001–02 fiscal years, for expenditure by the secretary for purposes of this article.

(1) Fifteen percent of moneys in the account shall be made available toward research on the biology, ecology, or management of noxious and invasive weeds.

(2) These research moneys shall be made available to qualified researchers through a grant program administered by the department. Proposals shall be evaluated in consultation with the Range Management Advisory Committee, with emphasis placed on funding of needs-based, applied and practical research.

7272. (a) To be eligible to receive funding from the Noxious Weed Management Account pursuant to this article, a weed management area, as defined in subdivision (b), shall be formed in a county or other geographic area.

(b) A "weed management area" is a local organization that brings together all interested landowners, land managers (private, city, county, state, and federal), special districts, and the public in a county or other geographical area for the purpose of coordinating and combining their action and expertise to deal with their common weed control problems. The organization shall function under the authority of a mutually developed memorandum of understanding and subject to statutory and regulatory requirements. A weed management area may be voluntarily governed by a chairperson or a steering committee.

(c) Not more than 10 percent of the noxious weed management funds distributed to weed management areas subject to this section

may be used for meeting, travel, administration, or other overhead costs.

(d) The secretary may appoint a noxious weed coordinator and a weed mapping specialist to assist in weed inventory, mapping, and control strategies.

(e) Each weed management area within the state shall create a cost-share plan for the integrated management of noxious weeds within that area. The plan shall be submitted to the department for review, approval, and funding.

(f) The department shall conduct private and public workshops as needed to discuss and plan weed management strategy with all interested and affected local, state and federal agencies, private landowners, educational institutions, interest groups, and county agricultural commissioners.

7273. (a) The department shall designate and provide staff support to an oversight committee to monitor this article and shall consider input from weed management areas and the Range Management Advisory Committee.

(b) The membership of the oversight committee shall include an equitable number of representatives from each of the following interests:

(1) Livestock production.
(2) Agricultural crop protection.
(3) Forest products industry.
(4) California Exotic Pest Plant Council.
(5) Research institutions.
(6) Wildlife sports groups.
(7) Environmental groups.
(8) Resources conservation districts.
(9) General public.

7274. Notwithstanding Section 7550.5 of the Government Code, the department shall submit to the Legislature an annual report on or before April 1 of each year, to and including the year 2005, highlighting the status of its efforts to abate noxious weeds in this state.

SEC. 2. The sum annually appropriated by Section 7272 of the Food and Agricultural Code shall be deposited in the Noxious Weed Management Account for purposes of Article 1.7 (commencing with Section 7270) of Chapter 1 of Part 4 of Division 4 of the Food and Agricultural Code.

CHAPTER 962

An act relating to education, and making an appropriation therefor.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. The sum of one million dollars ($1,000,000) is hereby appropriated for expenditure, without regard to the fiscal year, from the General Fund to the Superintendent of Public Instruction, for allocation, as an equal amount per unit of regular average daily attendance, to school districts and county offices of education to fund the acquisition of school library materials pursuant to Article 7 (commencing with Section 18180) of Chapter 2 of Part 11 of the Education Code. Each school district and county office of education to which an allocation is made under this section shall meet all of the following criteria:

(a) The school district or county office of education did not receive an allocation for the 1998–99 fiscal year from funds appropriated pursuant to Item 6110-149-0001 of Section 2.00 of the Budget Act of 1998.

(b) The school district or county office of education has approved a districtwide school library plan pursuant to Section 18181 of the Education Code.

(c) The amount allocated per unit of average daily attendance to a school district or county office of education pursuant to this subdivision shall not exceed the amount allocated to a school district or county office of education pursuant to Item 6110-149-0001 of Section 2.00 of the Budget Act of 1998.

CHAPTER 963

An act relating to water.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 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 Pajaro River Watershed consists of more than 1,400 square miles of land. Much of the watershed is prime agricultural and rangeland, providing a strong base for the region's economy. Much of the land within the watershed provides housing, employment, recreation, and education opportunities for central coast residents and visitors from throughout the state, nation, and world.

(b) The Pajaro River Watershed includes portions of San Benito, Santa Clara, Santa Cruz, and Monterey Counties, and each of those

counties is concerned about the ability of its communities to sustain a high quality of life with regard to agriculture, housing, commerce, education, and environmental protection.

(c) The Pajaro River Watershed includes numerous streams, creeks, rivers, wetlands, and estuaries that form the natural drainage system that directs rainwater to the ocean. The Pajaro River Watershed also includes numerous manmade water collection, drainage, and water disposal projects and systems that also direct rainwater to the ocean.

(d) The Pajaro River Watershed includes millions of square feet of impervious surfaces, such as roads, parking lots, homes, commercial and agricultural structures, schools and playgrounds, all of which reduce the amount of natural groundwater recharge that would otherwise be available to reduce rainwater runoff.

(e) The Pajaro River Watershed includes flood control structures, such as the Pajaro River levee system, that were designed and constructed, in most cases, nearly 50 years ago. Those flood control structures are now proving to be inadequate to protect the area's agricultural lands, commercial, residential, and public sector buildings, and environmental resources.

(f) The storms in the 1980's and 1990's have demonstrated that no jurisdiction within the Pajaro River Watershed has fully mitigated the impact of new construction on the existing drainage and flood control system.

(g) The lack of a local, intergovernmental, cooperative governance structure for the Pajaro River Watershed prevents a systematic, rational, cost-effective program of flood control and watershed management from being identified, funded, and implemented.

(h) It is the intent of the Legislature, through the enactment of this act, to provide the leadership necessary to enable the local governments and local residents of the Pajaro River Watershed to exercise appropriate powers to ensure that the human, economic, and environmental resources of the watershed are preserved, protected, and enhanced in terms of watershed management and flood protection.

SEC. 2. This section shall be known and may be cited as the Pajaro River Watershed Flood Prevention Authority Act. It is intended to supplement the Water Code and reads as follows:

PAJARO RIVER WATERSHED FLOOD PREVENTION AUTHORITY ACT

PART 1. INTRODUCTORY PROVISIONS

CHAPTER 1. SHORT TITLE

101. This act shall be known and may be cited as the Pajaro River Watershed Flood Prevention Authority Act.

CHAPTER 2. GENERAL PROVISIONS

201. (a) The need for coordinated planning, and the implementation of strategies, for flood prevention and control within the Pajaro River Watershed, and for the protection of public and private property from those waters may appropriately lead to the creation of the Pajaro River Watershed Flood Prevention Authority.

(b) The purpose of the Pajaro River Watershed Flood Prevention Authority is to identify, evaluate, fund, and implement flood prevention and control strategies in the Pajaro River Watershed, on an intergovernmental, cooperative basis.

CHAPTER 3. DEFINITIONS

301. "Appointing authority" means each of the following:

(a) The Board of Supervisors of the County of Monterey.

(b) The Board of Supervisors of the County of San Benito.

(c) The Board of Supervisors of the County of Santa Clara.

(d) The Board of Supervisors of the County of Santa Cruz.

(e) The Board of Directors of the Zone 7 Flood Control District.

(f) The Board of Directors of the Monterey County Water Resources Agency.

(g) The Board of Directors of the San Benito County Water District.

(h) The Board of Directors of the Santa Clara Valley Water District.

302. "Authority" means the Pajaro River Watershed Flood Prevention Authority.

303. "Board" means the board of directors of the authority.

304. "Incidental expenses" includes all of the following:

(a) The cost of planning and designing projects pursuant to this act, including the costs of environmental evaluations and mitigation for those projects.

(b) The costs associated with the creation and administration of any financing arrangement authorized by this act, including, but not limited to, the costs of creating or modifying assessment or special tax districts, the costs of collecting assessments and special taxes, and the

costs arising from the issuance and administration of any bonds issued under this act.

(c) Any other expenses incidental to the construction, completion, inspection, financing, or refinancing of any authorized project, including relocation costs.

305. "Local agency" means any local public entity.

306. "Pajaro River Watershed" means the watershed area of the Pajaro River and its tributaries as described in the General Map of the Pajaro River Basin (Plate 1), U.S. Army Corps of Engineers' "Interim Report for Flood Control, Pajaro River Basin, California and Appendices," dated June 1963.

307. "Project" means the acquisition, construction, maintenance, or operation of any flood control or prevention facility authorized under this act, including, but not limited to, the acquisition of any right-of-way and payment of incidental expenses. Participation in a project includes making payments or other contributions pursuant to any contract entered into with another governmental agency that requires the other governmental agency to perform work on a project.

PART 2. ORGANIZATION AND POWERS

CHAPTER 1. MEMBERSHIP, BOUNDARIES, AND GENERAL POWERS

401. (a) A board of directors consisting of eight members shall govern the authority. Each appointing authority shall appoint one member to the board, subject to all of the following:

(1) The Board of Supervisors of Monterey County shall be represented by the supervisor from the supervisorial district that is adjacent to the Pajaro River.

(2) The Board of Supervisors of Santa Cruz County shall be represented by the supervisor from the supervisorial district that is adjacent to the Pajaro River.

(3) The Zone 7 Flood Control District shall be represented by a person who resides in the portion of Santa Cruz County that is adjacent to the Pajaro River.

(4) The Monterey County Water Resources Agency shall be represented by a person who resides in the portion of Monterey County that is adjacent to the Pajaro River.

(b) On or before July 1, 2000, the appointing authorities shall appoint the initial members of the board.

(c) At its discretion, an appointing authority may appoint one of its own members as a member of the board.

(d) To the extent feasible, it is the intent of the Legislature that the persons appointed to the board by the appointing authorities be broadly representative of the geographic, ethnic, racial, gender, and cultural diversity of the residents of the authority.

(e) To the extent feasible, it is the intent of the Legislature that the persons appointed to the board by the appointing authorities have knowledge and experience in one or more of the following fields: flood control, habitat conservation and restoration, land use planning and development, public finance economics, and water resources.

402. Except for the directors appointed to the initial board, the directors shall serve for terms of four years. The eight directors initially appointed shall determine, by lot, the expiration dates for their initial terms. The terms of four directors shall expire on January 1, 2003. The terms of the four other directors shall expire on January 1, 2005. Thereafter, each appointing authority shall appoint a person to replace its respective director. The respective appointing authority shall fill a vacancy on the board within 90 days immediately subsequent to its occurrence.

403. Each director may receive compensation in an amount set by the board, not to exceed fifty dollars ($50) per day for each day's attendance at meetings of the board, not to exceed four meetings in any calendar month, together with actual, necessary, and reasonable expenses incurred in the performance of duties required or authorized by the board.

404. (a) At its first meeting and at its first meeting in January each year thereafter, the board shall elect a chair and vice-chair from among its members.

(b) Five members of the board shall constitute a quorum for the transaction of business.

(c) The board shall act only by ordinance, resolution, or motion. Except as specifically provided to the contrary by law, the affirmative vote of five members of the board is required on each action.

405. The board may employ and appoint any agents, officers, employees, attorneys, and consultants as may be required, prescribe their duties, fix their compensation, and prescribe the terms and conditions of their employment.

410. The boundaries of the authority shall be coterminous with the Pajaro River Watershed. On or before December 1, 2001, the board shall file a description of the exterior boundary of the authority pursuant to Chapter 8 (commencing with Section 54900) of Part 2 of Title 5 of the Government Code.

420. (a) The authority may undertake flood prevention and control projects within the Pajaro River Watershed.

(b) The authority's activities, programs, and projects shall address the protection of life, public and private property, agricultural crops, watercourses, watersheds, environmental resources, and public highways within its boundaries from damage from flood and storm waters. In addition, to the maximum extent economically feasible and consistent with its flood protection and flood management requirements and with state and federal agreements, the authority shall comply with all applicable environmental laws and regulations.

Nothing in this act is intended to amend, modify, or alter the jurisdiction or authority of the Department of Fish and Game or the provisions of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or any other state or federal laws whose purpose is to protect and preserve the natural environment.

421. In furtherance of its purposes, the authority may apply for and receive state and federal grants, loans, and other funding.

422. The authority may charge and each appointing authority shall pay the authority an amount sufficient to fund administrative costs associated with the operation of the authority, including, but not limited to, the costs of meeting notices, agendas, and other administrative functions.

423. Each local agency that includes territory within the Pajaro River Watershed shall notify the authority before undertaking any flood prevention and control activities, programs, and projects within that watershed.

PART 3. FINANCIAL PROVISIONS

CHAPTER 1. GENERAL FINANCIAL PROVISIONS

501. The authority may, in any year, levy assessments, reassessments, or special taxes and issue bonds to finance projects in accordance with, and pursuant to, the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), the Benefit Assessment Act of 1982 (Chapter 6.4 (commencing with Section 54703) of Part 1 of Division 2 of Title 5 of the Government Code), the Integrated Financing District Act (Chapter 1.5 (commencing with Section 53175) of Division 2 of Title 5 of the Government Code), 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), and the Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code).

502. Notwithstanding the provisions of any assessment act that the authority is authorized to use, any assessment diagram that any of those acts requires to be prepared prior to final approval of the authority need show only the boundaries of any assessment zones within the authority. The diagram may refer to the county assessor's maps and records for a detailed description of each lot or parcel.

503. (a) Notwithstanding any other provision of law, the authority may levy and collect assessments and reassessments in the same manner as provided in Article 3 (commencing with Section

51320) of Chapter 2 of Part 7 of Division 15 of the Water Code, for any or all of the following purposes:

(1) For the operation and maintenance of projects of the authority.

(2) For the satisfaction of liabilities arising from projects of the authority.

(3) For the administration costs of the authority.

(4) To accumulate a fund that may be used to advance the cost of projects of the authority. However, the advances shall be repaid, with interest as determined by the board, from assessments, reassessments, special taxes, or fees charged by the authority pursuant to this act.

(b) For purposes of this section, the board shall perform all the functions assigned by Article 3 (commencing with Section 51320) of Chapter 2 of Part 7 of Division 15 of the Water Code to the board of supervisors or the board of trustees.

(c) For purposes of this section, the board may order the creation of a separate assessment roll to pay the allowable expenses of any single project or any group or system of projects.

(d) An assessment, reassessment, or special tax may be imposed throughout the entire area of the authority, or within a portion of the area of the authority.

(e) The imposition of any assessment, reassessment, or special tax shall be in accordance with Articles XIII C and XIII D of the California Constitution.

504. Notwithstanding any other provision of law, Division 4 (commencing with Section 2800) of the Streets and Highways Code does not apply to any assessment levied by the authority.

505. (a) Notwithstanding any other provision of law, all assessments, reassessments, and special taxes levied by the authority may be collected together with, and not separately from, taxes for county purposes. Any county that is located within the authority shall collect, at the request of the authority, all assessments, reassessments, and special taxes levied by the authority and shall deposit those revenues with the trustee appointed pursuant to Section 801 to the credit of the authority.

(b) Each county may require that the amount to be collected be increased to include a proportionate amount of the county's reasonable collection and administrative costs, not to exceed ten dollars ($10) per installment for each lot or parcel, as reimbursement for expenses incurred by the county in collecting the assessment, reassessment, or special tax, if that action is in accordance with Articles XIII C and XIII D of the California Constitution.

506. Notwithstanding any other provision of law, any assessment or reassessment levied pursuant to this act shall be apportioned on a reasonable basis, as determined by the board, which may be based on land use category, proportionate storm water runoff, relative hazard of flooding, or infrastructure protection.

507. Notwithstanding any other provision of law, the board may include within the authority's annual budget a general unappropriated reserve fund not to exceed 25 percent of the total appropriations included in the authority's budget, exclusive of all items for bond interest and redemption, and the general appropriated reserve. The reserve fund may be used for emergencies, replacements, or other lawful purposes of the authority.

CHAPTER 2. SPECIAL CAPITAL ASSESSMENTS

Article 1. Formation of Zones

601. As an alternative or in addition to any other power available to the authority, the authority may, in any year, levy and collect assessments and sell bonds pursuant to this chapter for any project, if that action is in accordance with Articles XIII C and XIII D of the California Constitution. These assessments shall be levied within any zone determined by the board to particularly benefit from a given project. Assessment areas may overlap.

602. Before undertaking any assessment pursuant to this chapter, the authority shall adopt a resolution declaring its intention to do so, briefly describing the proposed project, specifying the exterior boundaries of the area to be assessed, and providing for the issuance of bonds, if any. The resolution shall briefly describe any existing or intended contract with any other governmental agency to share in financing or performance of the work on the project. The resolution shall also direct an officer of the authority to prepare a report pursuant to Section 603.

603. The report shall include all of the following:

(a) A general description of the project.

(b) A name for the proposed assessment zone, which may be in the form "Pajaro River Watershed Flood Prevention Assessment Zone Number _____."

(c) An estimate of the cost of the project. If part of the cost is expected to be paid from contributions from other governmental agencies, the report shall include an estimate of the expected total amount of those contributions.

(d) A plan for financing the project, including a brief description of the principal amount and maturities of any proposed bonds, and of any reserve or other special funds required. The plan shall include estimates of the annual revenue needed to pay debt service on bonds and to pay any other expenses arising in conjunction with the project, including any amounts needed to replenish reserve or other special funds.

(e) A specification of a method for annually apportioning the estimated annual costs of the project among the parcels in the area to be assessed, and a method for determining the rate of assessment.

The apportionment shall be in proportion to the benefit received by each parcel, as determined pursuant to Section 506. The specification shall be in sufficient detail to allow any property owner within the district to determine the annual amount that he or she would have to pay.

604. When the report is filed with the authority, the board may at a public meeting, tentatively approve the report and schedule a hearing on it not earlier than 30 days and not later than 90 days after the date on which the report is tentatively approved. The hearing may be continued for a period not to exceed six months. Notice of the hearing shall be published pursuant to Section 6066 of the Government Code in a newspaper of general circulation in the area proposed to be assessed, and the first publication shall occur not later than 20 days before the date of the hearing. The notice to be published shall be entitled "Notice of Flood Prevention Assessment Hearing" and shall include all of the following:

(a) The time and place of the hearing on the proposed assessments and bonds.

(b) A general description of the proposed project and the area proposed to be assessed.

(c) A statement that the authority is considering levying annual assessments on lots or parcels of property within the area of the proposed zone to pay for the project.

(d) A statement, if applicable, that the authority is considering issuing bonds to finance the local share of the cost of the proposed project.

(e) The name and telephone number of an employee of the authority from whom a copy of the report can be obtained and who can answer questions concerning the project and the hearing. The authority may charge the reasonable costs of reproduction for copies of the report, and shall make copies available for free public inspection at one or more public places within the area proposed to be assessed.

606. Upon approval in accordance with Articles XIII C and XIII D of the California Constitution, and if the board determines to proceed with the levy and collection of assessments and, if applicable, the sale of bonds, it shall adopt a resolution confirming the report, as modified, and ordering the levy of the assessments and, if applicable, the sale of bonds.

607. (a) Upon adopting a resolution pursuant to Section 606, the authority shall record a notice of assessment whereupon the assessment shall attach as a lien on the property assessed.

(b) From the date of the recordation of the notice of assessment, each special assessment levied under this chapter is a lien on the land on which it is levied. This lien is paramount to all other liens, except prior assessments and taxation. Unless sooner discharged, the lien continues for 10 years from the date of the recordation or, if bonds are issued to represent the assessment, until four years after the date

on which the last installment on the bonds or the last principal coupon attached to the bonds is due. All persons have constructive notice of this lien from the date of the recordation.

Article 2. Levy and Collection of Assessments

701. The validity of any assessment levied or bond issued under this chapter shall not be contested in any action or proceeding unless the action or proceeding is commenced within 60 days after the assessment is levied pursuant to Section 606. Any appeal from a final judgment in such an action or proceeding shall be perfected within 30 days after the entry of judgment.

702. An action to determine the validity of any assessment or bonds pursuant to this chapter may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. In any such action, all findings of fact or conclusions of the board upon all matters shall be conclusive unless the action was instituted within 30 days after the findings or conclusions were made.

703. After one or more zones have been created by the authority for the purpose of imposing assessments pursuant to this chapter, the board may, by resolution, provide for the levy of the assessments using the method for apportioning the assessment and for setting the rate of the assessment as set out in the report confirmed pursuant to Section 606. The clerk of the authority shall file a list of all parcels subject to assessments levied pursuant to this chapter and the amount of the assessment or assessments levied against each parcel, with the county auditor on or before August 10 of each tax year. The assessments shall be collected in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ad valorem taxes.

704. (a) In the event of nonpayment of any assessment levied pursuant to this chapter, and not later than four years after the due date of the last installment of principal, as a cumulative remedy, the amount when due and delinquent may, by order of the board, be collected pursuant to an action brought in the superior court to foreclose the lien.

(b) The lien of an assessment levied pursuant to this chapter on tax-deeded land may be foreclosed in the same manner as the foreclosure of other real property. The action shall be brought in the name of the authority.

(c) The costs of the action shall be fixed and allowed by the court and shall include reasonable attorney's fees, interest, penalties, and other charges and advances as provided by this chapter. The costs shall be included in the judgment. The amount of penalties, costs, and interest due shall be calculated up to the date of judgment.

(d) The court may adjudge and decree a lien against the lot or parcel of land covered by the assessment for the amount of the

judgment and may order the premises to be sold on execution as in the sale of other real estate by the process of the court, with the same rights of redemption.

(e) The board may, by resolution adopted prior to the issuance of bonds, covenant for the benefit of bondholders to commence and diligently prosecute to completion any foreclosure action regarding delinquent installments of any assessments or reassessments that secure the bonds that are to be issued, or to employ a trustee to do so on behalf of the bondholders.

Article 3. Bonds

801. The board may sell bonds or notes of the authority to finance projects as set out in the report confirmed pursuant to Section 606. The board shall authorize the issuance of bonds by adoption of a resolution which provides for all of the following:

(a) The denominations, form, and registration provisions of the bonds.

(b) The manner of execution of the sale of the bonds.

(c) The par amount of the bonds to be sold.

(d) The appointment of one or more banks or trust companies within the state having the necessary trust powers as trustee, fiscal agent, paying agent, or bond registrar.

(e) The execution of a document or indenture securing the bonds.

(f) The pledge or assignment of the designated assessment revenues to the repayment of the bonds.

(g) The interest rate to be borne by the bonds.

(h) Any other terms and conditions determined to be necessary by the board.

802. The bonds shall be signed by the chairperson of the board, and countersigned by the trustee. The bonds may be authenticated by a paying agent selected by the board, and the signatures of the chairperson and trustee may be facsimile signatures. If any officer whose signature appears on the bonds ceases to be an officer at any time, the signature shall nevertheless be valid and sufficient for all purposes.

803. The board may sell bonds pursuant to this chapter at public or private sale at not less than 95 percent of par value. The proceeds of the sale of the bonds shall be placed on deposit with the trustee to the credit of the authority and the issuing assessment district, and the proper records of the transaction shall be placed upon the books of the authority. The bond proceeds shall be used exclusively to finance or refinance projects and to pay incidental expenses pursuant to the report confirmed pursuant to Section 606.

804. The board may include in the aggregate principal amount of the bonds to be issued an amount for a reserve fund for the payment of the bonds. The amount to be included for the reserve fund shall not exceed the amount permitted by law. The reserve fund and all

interest earned on it shall either be used for the payment of debt service on the bonds, if there is a deficiency, and then only to the extent of the deficiency, or the funds may be transferred to the redemption fund for the bonds for advance or final retirement of the bonds. Notwithstanding any provision of this section, the amount and disposition of the reserve fund may conform to the provisions of the Internal Revenue Code or the regulations of the United States Department of the Treasury.

805. Any bonds or notes issued pursuant to this chapter may be refunded when and to the extent necessary as determined by the board.

PART 4. TERMINATION

Article 1. Repeal

901. If all of the following events occur, as described below, this act shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute that is enacted before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed:

(a) The entities described in Section 301 attend regularly scheduled meetings for the purposes of subdivisions (b) and (c).

(b) Both of the following occur on or before December 31, 1999:

(1) All entities described in Section 301 enter into a memorandum of understanding that provides for the identification, evaluation, funding, and implementation of flood prevention and control strategies in the Pajaro River Watershed on an intergovernmental, cooperative basis.

(2) The memorandum described in paragraph (1) is submitted to the Chief Clerk of the Assembly and the Secretary of the Senate.

(c) On or before June 30, 2000, both of the following occur:

(1) A joint powers agency is formed as authorized under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, pursuant to a joint powers agreement entered into by all entities described in Section 301, for the purpose of accomplishing the objectives listed in paragraph (1) of subdivision (a).

(2) Evidence of the formation of a joint powers agency pursuant to paragraph (1) is submitted to the Chief Clerk of the Assembly and the Secretary of the Senate.

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 964

An act to amend Sections 51.9 and 52 of the Civil Code, relating to sexual harassment.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 51.9 of the Civil Code is amended to read:

51.9. (a) A person is liable in a cause of action for sexual harassment under this section when the plaintiff proves all of the following elements:

(1) There is a business, service, or professional relationship between the plaintiff and defendant. Such a relationship may exist between a plaintiff and a person, including, but not limited to, any of the following persons:

(A) Physician, psychotherapist, or dentist. For purposes of this section, "psychotherapist" has the same meaning as set forth in paragraph (1) of subdivision (c) of Section 728 of the Business and Professions Code.

(B) Attorney, holder of a master's degree in social work, real estate agent, real estate appraiser, accountant, banker, trust officer, financial planner loan officer, collection service, building contractor, or escrow loan officer.

(C) Executor, trustee, or administrator.

(D) Landlord or property manager.

(E) Teacher.

(F) A relationship that is substantially similar to any of the above.

(2) The defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or severe.

(3) There is an inability by the plaintiff to easily terminate the relationship.

(4) The plaintiff has suffered or will suffer economic loss or disadvantage or personal injury, including, but not limited to, emotional distress or the violation of a statutory or constitutional right, as a result of the conduct described in paragraph (2).

(b) In an action pursuant to this section, damages shall be awarded as provided by subdivision (b) of Section 52.

(c) Nothing in this section shall be construed to limit application of any other remedies or rights provided under the law.

(d) The definition of sexual harassment and the standards for determining liability set forth in this section shall be limited to determining liability only with regard to a cause of action brought under this section.

SEC. 2. Section 52 of the Civil Code is amended to read:

52. (a) Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51 or 51.5, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than one thousand dollars ($1,000), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51 or 51.5.

(b) Whoever denies the right provided by Section 51.7 or 51.9, or aids, incites, or conspires in that denial, is liable for each and every offense for the actual damages suffered by any person denied that right and, in addition, the following:

(1) An amount to be determined by a jury, or a court sitting without a jury, for exemplary damages.

(2) A civil penalty of twenty-five thousand dollars ($25,000) to be awarded to the person denied the right provided by Section 51.7.

(3) Attorney's fees as may be determined by the court.

(c) Whenever there is reasonable cause to believe that any person or group of persons is engaged in conduct of resistance to the full enjoyment of any of the rights hereby secured, and that conduct is of that nature and is intended to deny the full exercise of the rights herein described, the Attorney General, any district attorney or city attorney, or any person aggrieved by the conduct may bring a civil action in the appropriate court by filing with it a complaint. The complaint shall contain the following:

(1) The signature of the officer, or, in his or her absence, the individual acting on behalf of the officer, or the signature of the person aggrieved.

(2) The facts pertaining to the conduct.

(3) A request for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct, as the complainant deems necessary to insure the full enjoyment of the rights herein described.

(d) Whenever an action has been commenced in any court seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States on account of race, color, religion, sex, national origin, or disability, the Attorney General or any district attorney or city attorney for or in the name of the people of the State of California may intervene in

the action upon timely application if the Attorney General or any district attorney or city attorney certifies that the case is of general public importance. In that action, the people of the State of California shall be entitled to the same relief as if it had instituted the action.

(e) Actions under this section shall be independent of any other remedies or procedures that may be available to an aggrieved party.

(f) Any person claiming to be aggrieved by an alleged unlawful practice in violation of Section 51 or 51.7 may also file a verified complaint with the Department of Fair Employment and Housing pursuant to Section 12948 of the Government Code.

(g) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(h) For the purposes of this section, "actual damages" means special and general damages. This subdivision is declaratory of existing law.

SEC. 3. Section 52 of the Civil Code is amended to read:

52. (a) Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51 or 51.5, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than one thousand dollars ($1,000), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51 or 51.5.

(b) Whoever denies the right provided by Section 51.7 or 51.9, or aids, incites, or conspires in that denial, is liable for each and every offense for the actual damages suffered by any person denied that right and, in addition, the following:

(1) An amount to be determined by a jury, or a court sitting without a jury, for exemplary damages, if the defendant is guilty of fraud, malice, or oppression.

(2) A civil penalty of twenty-five thousand dollars ($25,000) to be awarded to the person denied the right provided by Section 51.7.

(3) Attorney's fees as may be determined by the court.

(c) Whenever there is reasonable cause to believe that any person or group of persons is engaged in conduct of resistance to the full enjoyment of any of the rights hereby secured, and that conduct is of that nature and is intended to deny the full exercise of the rights herein described, the Attorney General, any district attorney or city

attorney, or any person aggrieved by the conduct may bring a civil action in the appropriate court by filing with it a complaint. The complaint shall contain the following:

(1) The signature of the officer, or, in his or her absence, the individual acting on behalf of the officer, or the signature of the person aggrieved.

(2) The facts pertaining to the conduct.

(3) A request for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct, as the complainant deems necessary to insure the full enjoyment of the rights herein described.

(d) Whenever an action has been commenced in any court seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States on account of race, color, religion, sex, national origin, or disability, the Attorney General or any district attorney or city attorney for or in the name of the people of the State of California may intervene in the action upon timely application if the Attorney General or any district attorney or city attorney certifies that the case is of general public importance. In that action, the people of the State of California shall be entitled to the same relief as if it had instituted the action.

(e) Actions under this section shall be independent of any other remedies or procedures that may be available to an aggrieved party.

(f) Any person claiming to be aggrieved by an alleged unlawful practice in violation of Section 51 or 51.7 may also file a verified complaint with the Department of Fair Employment and Housing pursuant to Section 12948 of the Government Code.

(g) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(h) For the purposes of this section, "actual damages" means special and general damages. This subdivision is declaratory of existing law.

SEC. 4. Section 3 of this bill incorporates amendments to Section 52 of the Civil Code proposed by both this bill and AB 1268. It shall only become operative if (1) both bills are enacted and become effective on January 1, 2000, (2) each bill amends Section 52 of the

Civil Code, and (3) this bill is enacted after AB 1268, in which case Section 2 of this bill shall not become operative.

CHAPTER 965

An act to add Chapter 9 (commencing with Section 8980) to Part 6 of the Education Code, relating to agricultural education, and making an appropriation therefor.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

I am signing Assembly Bill No. 1645; however, I am eliminating the $127,500 appropriation to the State Department of Education made in subdivision (a) of Section 2. The bill provides that this appropriation is for expenditure "exclusively for staff." Appropriate funding levels for staff are typically determined in the annual budget change proposal process based on a workload analysis and in consideration of all other priorities. Given that the department has eight staff already devoted to this area, it should be able to implement this bill without additional staff.

I am, however, sustaining the one-time $300,000 appropriation which will be used to develop an agricultural education curriculum. Agriculture plays a vital role in California's culture and economy. This bill will help ensure that agriculture is given the appropriate emphasis in our curriculum so that out children grow up recognizing its value.

GRAY DAVIS, Governor

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

SECTION 1. Chapter 9 (commencing with Section 8980) is added to Part 6 of the Education Code, to read:

CHAPTER 9. AGRICULTURAL EDUCATION

8980. This chapter shall be known and may be cited as the Agricultural Education Act of 1999.

8981. The Legislature finds and declares all of the following:

(a) Agriculture is one of the most important industries in California. Gross income from production agriculture annually exceeds twenty-six billion eight hundred million dollars ($26,800,000,000). Support industries in agricultural marketing, business, research, communications, and education contribute another ten billion dollars ($10,000,000,000) to the state's economy and exports annually exceeds six billion dollars ($6,000,000,000).

(b) During 1998, approximately 399,000 agricultural jobs were performed by farmworkers, who, through their tireless efforts, have contributed greatly to the success of the agricultural industry.

(c) There is currently no comprehensive agricultural education program for California's pupils. According to the National Academy of Sciences, most Americans have insufficient knowledge about the

social and economic significance of agriculture and its links to human health and environmental quality. Many of the challenges facing the state clearly require an understanding of these linkages if solutions are to be found. These challenges include changing demographics, rapid urbanization, responding to worldwide food and fiber supply needs, changing domestic and world trade policies, and increased global competition in raw agricultural commodities and value added products.

(d) Pupils need to understand all of the following:

(1) The role that agriculture plays in the economy.

(2) The role science plays in changing agriculture.

(3) The relationship of agriculture and the environment.

(4) The wide variety of employment opportunities that exist in the industry.

(e) A basic education across curriculum subjects, and grade levels can strengthen students' understanding, of agriculture and its fundamental importance to society.

(f) It is in the best interest of the public that a statewide comprehensive program, with state level coordination and regional delivery, be established to infuse agricultural education into a broad range of academic subject areas, provide a stronger career preparation program to meet the needs of a dynamic and competitive agricultural industry in California, and to provide for better informed citizens in the state.

8982. (a) The State Department of Education, in consultation with the State Agricultural Advisory Committee shall establish a nonmandatory comprehensive agricultural education program for prekindergarten and kindergarten children and grades 1 to 12, inclusive, to provide statewide coordination for agricultural education in California schools.

(b) The program shall include, but shall not be limited to, the following elements:

(1) The development, review and dissemination of curriculum and instruction materials to ensure accuracy, grade appropriateness, and support of State Standards and Frameworks.

(2) Professional development for student teachers and practicing teachers.

(3) The development of statewide educational activities for pupils.

(4) State level consultation with local education agencies, agricultural organizations, and universities and colleges, for materials review, professional development, and support.

(5) The coordination and monitoring of the regional agricultural education program delivery.

(c) The program shall provide for regional delivery of education in agricultural awareness, literacy, career exploration, and preparation activities that include, but not be limited to, the following:

(1) Development of collaborative models, utilizing matching state and community-based funds, to develop objective, age appropriate materials for use in classrooms within each of California's agriculture production regions.

(2) Technical assistance to local districts and private parties, including agricultural foundations, agricultural associations, nonprofit trade associations and businesses.

(3) Development of a statewide resource center.

(4) Coordination and delivery of professional development activities on a regional basis.

(5) Coordination of regional pupil activities.

(6) Coordination and monitoring of funding within the regions.

SEC. 2. (a) The amount of one hundred twenty-seven thousand five hundred dollars ($127,500) is hereby appropriated from the General Fund to the State Department of Education for expenditure exclusively for staff for purposes of Section 8982 of the Education Code. It is the intent of the Legislature to appropriate two hundred fifty-five thousand dollars ($255,000) annually, commencing in the 2000–01 fiscal year, from the General Fund to the State Department of Education for expenditure exclusively for staff for purposes of Section 8982 of the Education Code.

(b) The amount of three hundred thousand dollars ($300,000) is hereby appropriated from the General Fund to the State Department of Education as a one-time expenditure for purposes of curriculum development for agricultural education.

CHAPTER 966

An act to amend Section 65589.5 of the Government Code, relating to land use.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) The Legislature finds all of the following:

(1) The lack of affordable housing is a critical problem which threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments which limit the approval of affordable housing, increase the cost of land for

affordable housing, and require that high fees and exactions be paid by producers of potentially affordable housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions which result in disapproval of affordable housing projects, reduction in density of affordable housing projects, and excessive standards for affordable housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible affordable housing developments which contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without meeting the provisions of subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands to urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project affordable to very low, low- or moderate-income households or condition approval in a manner that renders the project infeasible for development for the use of very low, low- or moderate-income households unless it makes written findings based upon substantial evidence in the record as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588 and that is in substantial compliance with this article, and the development project is not needed for the jurisdiction to meet its share of the regional housing need of very low, low- or moderate-income housing.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) Approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the development at a different site, including those sites identified pursuant to paragraph (1) of subdivision (c) of Section 65583, without rendering the development unaffordable to low- and moderate-income households.

(5) The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or waste water facilities to serve the project.

(6) The development project is inconsistent with the jurisdiction's general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element pursuant to this article.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with written development standards, conditions, and policies appropriate to, and consistent with, meeting the quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583. Nor shall anything in this section be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law which are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities, because the Legislature finds that the lack of affordable housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Affordable to very low, low- or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households, as defined in Section 50093 of the Health and Safety Code, or middle income households, as defined in Section 65008. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(3) "Area median income" shall mean area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for the very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(4) "Neighborhood" means a planning area commonly identified as such in a community's planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(i) If any city, county, or city and county denies approval or imposes restrictions, including a reduction of allowable densities or the percentage of a lot which may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, which have a substantial adverse effect on the viability or affordability of a housing development affordable to low- and moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d).

(j) When a proposed housing development project complies with the applicable objective general plan and zoning standards and

criteria in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

SEC. 2. Section 1 of this act shall not become operative if SB 948 is enacted and becomes effective on or before January 1, 2000.

CHAPTER 967

An act to amend Sections 51238, 51238.5, 65580, 65583, and 65950 of, and to add Section 51230.2 to, the Government Code, relating to farmworker housing.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 51230.2 is added to the Government Code, to read:

51230.2. (a) Except as provided in Section 51238, and notwithstanding Section 51222 or 66474.4, a landowner may subdivide land that is currently designated as an agricultural preserve if all of the following apply:

(1) The parcel to be sold or leased is no more than five acres.

(2) The parcel shall be sold or leased to a nonprofit organization, a city, a county, a housing authority, or a state agency. A lessee that is a nonprofit organization shall not sublease that parcel without the written consent of the landowner.

(3) The parcel to be sold or leased shall be subject to a deed restriction that limits the use of the parcel to agricultural laborer

housing facilities for not less than 30 years. That deed restriction shall also require that parcel to be merged with the parcel from which it was subdivided when the parcel ceases to be used for agricultural laborer housing.

(4) There is a written agreement between the parties to the sale or lease and their successors to operate the parcel to be sold or leased under joint management of the parties, subject to the terms and conditions and for the duration of the contract executed pursuant to Article 3 (commencing with Section 51240).

(5) The parcel to be sold or leased is (A) within a city or (B) in an unincorporated territory or sphere of influence that is contiguous to one or more parcels that are already zoned residential, commercial, or industrial and developed with existing residential, commercial, or industrial uses.

(b) The agricultural labor housing project shall be designed to abate, to the extent practicable, impacts on adjacent landowners' agricultural husbandry practices. The final plan for the housing shall include an addendum that explains what features will be included to meet this goal.

(c) A subdivision of land pursuant to this section shall not affect any contract executed pursuant to Article 3 (commencing with Section 51240). The parcel to be sold or leased shall remain subject to that contract.

SEC. 2. Section 51238 of the Government Code is amended to read:

51238. (a) (1) Notwithstanding any determination of compatible uses by the county or city pursuant to this article, unless the board or council after notice and hearing makes a finding to the contrary, the erection, construction, alteration, or maintenance of gas, electric, water, communication, or agricultural laborer housing facilities are hereby determined to be compatible uses within any agricultural preserve.

(2) No land occupied by gas, electric, water, communication, or agricultural laborer housing facilities shall be excluded from an agricultural preserve by reason of that use.

(b) The board of supervisors may impose conditions on lands or land uses to be placed within preserves to permit and encourage compatible uses in conformity with Section 51238.1, particularly public outdoor recreational uses.

SEC. 3. Section 51238.5 of the Government Code is amended to read:

51238.5. (a) If an owner of land agrees to permit the use of his or her land for free public recreation, the board or council may agree to indemnify the owner against all claims arising from that public use. The owner's agreement that the land be used for free, public recreation shall not be construed as an implied dedication to that use.

(b) If an owner of land agrees to permit the use of his or her land for agricultural laborer housing facilities authorized pursuant to

Section 51238, the city, county, housing authority, state agency, or nonprofit organization may indemnify the owner against all claims arising from that use.

SEC. 4. Section 65580 of the Government Code is amended to read:

65580. The Legislature finds and declares as follows:

(a) The availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a priority of the highest order.

(b) The early attainment of this goal requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels.

(c) The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.

(d) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.

(e) The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan and to cooperate with other local governments and the state in addressing regional housing needs.

SEC. 5. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing

characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584.

(5) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) An analysis of any special housing needs, such as those of the handicapped, elderly, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

(7) An analysis of opportunities for energy conservation with respect to residential development.

(8) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated

cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project by project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a Low and Moderate Income Housing Fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) (A) Identify adequate sites which will be made available through appropriate zoning and development standards and with services and facilities, including sewage collection and treatment,

domestic water supply, and septic tanks and wells, needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing in order to meet the community's housing goals as identified in subdivision (b). Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low and low-income households. Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low and very low income households.

(B) For purposes of this paragraph, the phrase "use by right" shall mean the use does not require a conditional use permit, except when the proposed project is a mixed-use project involving both commercial or industrial uses and residential uses. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(C) The requirements of this subdivision regarding identification of sites for farmworker housing shall apply commencing with the next revision of housing elements required by Section 65588 following the enactment of this subparagraph.

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, or color.

(6) (A) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not

available. The program may include strategies that involve local regulation and technical assistance.

(B) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by July 1, 1992.

(e) Failure of the department to review and report its findings pursuant to Section 65585 to the local government between July 1, 1992, and the next periodic review and revision required by Section 65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to Part 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code.

SEC. 6. Section 65950 of the Government Code is amended to read:

65950. (a) Any public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(1) (A) One hundred eighty days from the date of certification by the lead agency of the environmental impact report if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.

(B) Ninety days from the date of certification by the lead agency of the environmental impact report, if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project and all of the following conditions are met:

(i) The development project consists of the development of housing for agricultural employees, as defined in subdivision (b) of Section 1140.4 of the Labor Code, and is affordable to very low or low-income households, as defined pursuant to Sections 50105 and 50079.5 of the Health and Safety Code, respectively.

(ii) Prior to the application being deemed complete for the development project pursuant to Article 3 (commencing with Section 65940), the lead agency received written notice from the project applicant that an application has been made or will be made for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance from a public agency or federal agency, and the notice specifies the financial assistance that has been applied for or will be applied for and the deadline for

application for that assistance, the requirement that one of the approvals of the development project by the lead agency is a prerequisite to the application for or approval of the application for financial assistance, and that the financial assistance is necessary for the project to be affordable as required pursuant to clause (i).

(iii) There is confirmation that the application pursuant to clause (i) has been made to the public agency or federal agency prior to certification of the environmental impact report.

(2) Sixty days from the date of adoption by the lead agency of the negative declaration if a negative declaration is completed and adopted for the development project.

(3) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) if the project is exempt from the California Environmental Quality Act.

(b) Nothing in this section precludes a project applicant and a public agency from mutually agreeing in writing to an extension of any time limit provided by this section pursuant to Section 65957.

(c) For purposes of this section, "lead agency" and "negative declaration" shall have the same meaning as those terms are defined in Sections 21067 and 21064 of the Public Resources Code, respectively.

SEC. 7. It is the intent of the Legislature that when reviewing a jurisdiction's housing element for substantial compliance with state law, the Department of Housing and Community Development shall (a) consider whether the sites identified for farmworker housing pursuant to paragraph (1) of subdivision (c) of Section 65583 of the Government Code facilitate the improvement and development of housing for farmworkers while minimizing the development of prime agricultural land to urban uses, and (b) recognize and support efforts by cities and counties in agricultural areas to work together cooperatively to identify their respective share of the sites needed for farmworker housing and to locate those sites, to the extent feasible, within or adjacent to existing urbanized areas.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 9. Section 6 of this act shall become operative only if SB 948 is not enacted in the first year of the 1999–2000 Regular Session of the Legislature.

CHAPTER 968

An act to amend Sections 7060, 7060.2, 7060.4, 7060.7, 65009, 65589.5, 65915, and 65950 of the Government Code, relating to housing.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 7060 of the Government Code is amended to read:

7060. (a) No public entity, as defined in Section 811.2, shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease.

(b) For the purposes of this chapter, the following definitions apply:

(1) "Accommodations" means either of the following:

(A) The residential rental units in any detached physical structure containing four or more residential rental units.

(B) With respect to a detached physical structure containing three or fewer residential rental units, the residential rental units in that structure and in any other structure located on the same parcel of land, including any detached physical structure specified in subparagraph (A).

(2) "Disabled" means a person with a disability, as defined in Section 12955.3 of the Government Code.

SEC. 2. Section 7060.2 of the Government Code is amended to read:

7060.2. If a public entity, by valid exercise of its police power, has in effect any control or system of control on the price at which accommodations may be offered for rent or lease, that entity may, notwithstanding any provision of this chapter, provide by statute or ordinance, or by regulation as specified in Section 7060.5, that any accommodations which have been offered for rent or lease and which were subject to that control or system of control at the time the accommodations were withdrawn from rent or lease, shall be subject to the following:

(a) If the accommodations are offered again for rent or lease for residential purposes within two years of the date the accommodations were withdrawn from rent or lease, the following provisions shall govern:

(1) The accommodations shall be subject to any control on the price at which they may be offered in the manner and to the same extent as if the accommodations had not been withdrawn from rent or lease. This paragraph shall prevail over any conflicting provision

of law authorizing the landlord to establish the rental rate upon the initial hiring of the accommodations.

(2) The owner of the accommodations shall be liable to any tenant or lessee who was displaced from the property by that action for actual and exemplary damages. Any action by a tenant or lessee pursuant to this paragraph shall be brought within three years of the withdrawal of the accommodations from rent or lease. However, nothing in this paragraph precludes a tenant from pursuing any alternative remedy available under the law.

(3) A public entity which has acted pursuant to this section may institute a civil proceeding against any owner who has again offered accommodations for rent or lease subject to this subdivision, for exemplary damages for displacement of tenants or lessees. Any action by a public entity pursuant to this paragraph shall be brought within three years of the withdrawal of the accommodations from rent or lease.

(4) Any owner who offers accommodations again for rent or lease shall first offer the unit for rent or lease to the tenant or lessee displaced from that unit by the withdrawal pursuant to this chapter, if the tenant has advised the owner in writing within 30 days of the displacement of his or her desire to consider an offer to renew the tenancy and has furnished the owner with an address to which that offer is to be directed. That tenant, lessee, or former tenant or lessee may advise the owner at any time during the eligibility of a change of address to which an offer is to be directed.

If the owner again offers the accommodations for rent or lease pursuant to this subdivision, and the tenant or lessee has advised the owner pursuant to this subdivision of a desire to consider an offer to renew the tenancy, then the owner shall offer to reinstitute a rental agreement or lease on terms permitted by law to that displaced tenant or lessee.

This offer shall be deposited in the United States mail, by registered or certified mail with postage prepaid, addressed to the displaced tenant or lessee at the address furnished to the owner as provided in this subdivision, and shall describe the terms of the offer. The displaced tenant or lessee shall have 30 days from the deposit of the offer in the mail to accept the offer by personal delivery of that acceptance or by deposit of the acceptance in the United States mail by registered or certified mail with postage prepaid.

(b) (1) If the accommodations are offered again for residential purposes more than two years after the date the accommodations were withdrawn from rent or lease, the accommodations shall be subject to any control on the price at which they may be offered in the manner and to the same extent as if the accommodations had not been withdrawn from rent or lease, subject to any adjustments otherwise available under the system of control. This subdivision shall prevail over any conflicting provision of law authorizing the landlord

to establish the rental rate upon the initial hiring of the accommodations.

(2) A public entity which has acted pursuant to this section, may require by statute or ordinance, or by regulation as specified in Section 7060.5, that an owner who offers accommodations again for rent or lease within a period not exceeding 10 years from the date on which they are withdrawn, and which are subject to this subdivision, shall first offer the unit to the tenant or lessee displaced from that unit by the withdrawal, if that tenant or lessee requests the offer in writing within 30 days after the owner has notified the public entity of an intention to offer the accommodations again for residential rent or lease pursuant to a requirement adopted by the public entity under subdivision (c) of Section 7060.4. The owner of the accommodations shall be liable to any tenant or lessee who was displaced by that action for failure to comply with this paragraph, for punitive damages in an amount which does not exceed the contract rent for six months.

(c) If the accommodations are demolished, and new accommodations are constructed on the same property, and offered for rent or lease within five years of the date the accommodations were withdrawn from rent or lease, the newly constructed accommodations shall be subject to any system of controls on the price at which they would be offered on the basis of a fair and reasonable return on the newly constructed accommodations, notwithstanding any exemption from such a system of controls for newly constructed accommodations.

SEC. 3. Section 7060.4 of the Government Code is amended to read:

7060.4. (a) Any public entity which, by a valid exercise of its police power, has in effect any control or system of control on the price at which accommodations are offered for rent or lease, may require by statute or ordinance, or by regulation as specified in Section 7060.5, that the owner notify the entity of an intention to withdraw those accommodations from rent or lease and may require that the notice contain statements, under penalty of perjury, providing information on the number of accommodations, the address or location of those accommodations, the name or names of the tenants or lessees of the accommodations, and the rent applicable to each residential rental unit.

Information respecting the name or names of the tenants, the rent applicable to any residential rental unit, or the total number of accommodations, is confidential information and for purposes of this chapter shall be treated as confidential information by any public entity for purposes of the Information Practices Act of 1977, as contained in Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code. A public entity shall, to the extent required by the preceding sentence, be considered an "agency," as defined by subdivision (d) of Section 1798.3 of the Civil Code.

(b) The statute, ordinance, or regulation of the public entity may require that the owner record with the county recorder a memorandum summarizing the provisions, other than the confidential provisions, of the notice in a form which shall be prescribed by the statute, ordinance, or regulation, and require a certification with that notice that actions have been initiated as required by law to terminate any existing tenancies. In that situation, the date on which the accommodations are withdrawn from rent or lease for purposes of this chapter is 120 days from the delivery in person or by first-class mail of that notice to the public entity. However, if the tenant or lessee is at least 62 years of age or disabled, and has lived in his or her accommodations for at least one year prior to the date of delivery to the public entity of the notice of intent to withdraw pursuant to subdivision (a), then the date of withdrawal of the accommodations of that tenant or lessee shall be extended to one year after the date of delivery of that notice to the public entity, provided that the tenant or lessee gives written notice of his or her entitlement to an extension to the owner within 60 days of the date of delivery to the public entity of the notice of intent to withdraw. In that situation, the following provisions shall apply:

(1) The tenancy shall be continued on the same terms and conditions as existed on the date of delivery to the public entity of the notice of intent to withdraw, subject to any adjustments otherwise available under the system of control.

(2) No party shall be relieved of the duty to perform any obligation under the lease or rental agreement.

(3) The owner may elect to extend the date of withdrawal on any other accommodations up to one year after date of delivery to the public entity of the notice of intent to withdraw, subject to paragraphs (1) and (2).

(4) Within 30 days of the notification by the tenant or lessee to the owner of his or her entitlement to an extension, the owner shall give written notice to the public entity of the claim that the tenant or lessee is entitled to stay in their accommodations for one year after date of delivery to the public entity of the notice of intent to withdraw.

(5) Within 90 days of date of delivery to the public entity of the notice of intent to withdraw, the owner shall give written notice to the public entity and the affected tenant or lessee of the owner's election to extend the date of withdrawal and the new date of withdrawal under paragraph (3).

(c) The statute, ordinance, or regulation of the public entity adopted pursuant to subdivision (a) may also require the owner to notify any tenant or lessee displaced pursuant to this chapter of the following:

(1) That the public entity has been notified pursuant to subdivision (a).

(2) That the notice to the public entity specified the name and the amount of rent paid by the tenant or lessee as an occupant of the accommodations.

(3) The amount of rent the owner specified in the notice to the public entity.

(4) Notice to the tenant or lessee of his or her rights under paragraph (4) of subdivision (a) of Section 7060.2.

(5) Notice to the tenant or lessee of the following:

(A) If the tenant or lessee is at least 62 years of age or disabled, and has lived in his or her accommodations for at least one year prior to the date of delivery to the public entity of the notice of intent to withdraw, then tenancy shall be extended to one year after date of delivery to the public entity of the notice of intent to withdraw, provided that the tenant or lessee gives written notice of his or her entitlement to the owner within 60 days of date of delivery to the public entity of the notice of intent to withdraw.

(B) The extended tenancy shall be continued on the same terms and conditions as existed on date of delivery to the public entity of the notice of intent to withdraw, subject to any adjustments otherwise available under the system of control.

(C) No party shall be relieved of the duty to perform any obligation under the lease or rental agreement during the extended tenancy.

(d) The statute, ordinance, or regulation of the public entity adopted pursuant to subdivision (a) may also require the owner to notify the public entity in writing of an intention to again offer the accommodations for rent or lease.

SEC. 4. Section 7060.7 of the Government Code is amended to read:

7060.7. It is the intent of the Legislature in enacting this chapter to supersede any holding or portion of any holding in Nash v. City of Santa Monica, 37 Cal.3d 97 to the extent that the holding, or portion of the holding, conflicts with this chapter, so as to permit landlords to go out of business. However, this act is not otherwise intended to do any of the following:

(a) Interfere with local governmental authority over land use, including regulation of the conversion of existing housing to condominiums or other subdivided interests or to other nonresidential use following its withdrawal from rent or lease under this chapter.

(b) Preempt local or municipal environmental or land use regulations, procedures, or controls that govern the demolition and redevelopment of residential property.

(c) Override procedural protections designed to prevent abuse of the right to evict tenants.

(d) Permit an owner to withdraw from rent or lease less than all of the accommodations, as defined by paragraph (1) or (2) of subdivision (b) of Section 7060.

(e) Grant to any public entity any power which it does not possess independent of this chapter to control or establish a system of control on the price at which accommodations may be offered for rent or lease, or to diminish any such power which that public entity may possess, except as specifically provided in this chapter.

(f) Alter in any way either Section 65863.7 relating to the withdrawal of accommodations which comprise a mobilehome park from rent or lease or subdivision (f) of Section 798.56 of the Civil Code relating to a change of use of a mobilehome park.

SEC. 5. Section 65009 of the Government Code is amended to read:

65009. (a) (1) The Legislature finds and declares that there currently is a housing crisis in California and it is essential to reduce delays and restraints upon expeditiously completing housing projects.

(2) The Legislature further finds and declares that a legal action or proceeding challenging a decision of a city, county, or city and county has a chilling effect on the confidence with which property owners and local governments can proceed with projects. Legal actions or proceedings filed to attack, review, set aside, void, or annul a decision of a city, county, or city and county pursuant to this division, including, but not limited to, the implementation of general plan goals and policies that provide incentives for affordable housing, open-space and recreational opportunities, and other related public benefits, can prevent the completion of needed developments even though the projects have received required governmental approvals.

(3) The purpose of this section is to provide certainty for property owners and local governments regarding decisions made pursuant to this division.

(b) (1) In an action or proceeding to attack, review, set aside, void, or annul a finding, determination, or decision of a public agency made pursuant to this title at a properly noticed public hearing, the issues raised shall be limited to those raised in the public hearing or in written correspondence delivered to the public agency prior to, or at, the public hearing, except where the court finds either of the following:

(A) The issue could not have been raised at the public hearing by persons exercising reasonable diligence.

(B) The body conducting the public hearing prevented the issue from being raised at the public hearing.

(2) If a public agency desires the provisions of this subdivision to apply to a matter, it shall include in any public notice issued pursuant to this title a notice substantially stating all of the following: "If you challenge the (nature of the proposed action) in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the (public entity conducting the hearing) at, or prior to, the public hearing."

(3) The application of this subdivision to causes of action brought pursuant to subdivision (d) applies only to the final action taken in response to the notice to the city or county clerk. If no final action is taken, then the issue raised in the cause of action brought pursuant to subdivision (d) shall be limited to those matters presented at a properly noticed public hearing or to those matters specified in the notice given to the city or county clerk pursuant to subdivision (d), or both.

(c) (1) Except as provided in subdivision (d), no action or proceeding shall be maintained in any of the following cases by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body's decision:

(A) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a general or specific plan. This paragraph does not apply where an action is brought based upon the complete absence of a general plan or a mandatory element thereof, but does apply to an action attacking a general plan or mandatory element thereof on the basis that it is inadequate.

(B) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a zoning ordinance.

(C) To determine the reasonableness, legality, or validity of any decision to adopt or amend any regulation attached to a specific plan.

(D) To attack, review, set aside, void, or annul the decision of a legislative body to adopt, amend, or modify a development agreement. An action or proceeding to attack, review, set aside, void, or annul the decisions of a legislative body to adopt, amend, or modify a development agreement shall only extend to the specific portion of the development agreement that is the subject of the adoption, amendment, or modification. This paragraph applies to development agreements, amendments, and modifications adopted on or after January 1, 1996.

(E) To attack, review, set aside, void, or annul any decision on the matters listed in Sections 65901 and 65903, or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit.

(F) Concerning any of the proceedings, acts, or determinations taken, done, or made prior to any of the decisions listed in subparagraphs (A), (B), (C), (D), and (E).

(2) In the case of an action or proceeding challenging the adoption or revision of a housing element pursuant to this subdivision, the action or proceeding may, in addition, be maintained if it is commenced and service is made on the legislative body within 60 days following the date that the Department of Housing and Community Development reports its findings pursuant to subdivision (h) of Section 65585.

(d) An action or proceeding shall be commenced and the legislative body served within one year after the accrual of the cause

of action as provided in this subdivision, if the action or proceeding meets both of the following requirements:

(1) It is brought in support of or to encourage or facilitate the development of housing that would increase the community's supply of housing affordable to persons and families with low or moderate incomes, as defined in Section 50079.5 of the Health and Safety Code, or with very low incomes, as defined in Section 50105 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. This subdivision is not intended to require that the action or proceeding be brought in support of or to encourage or facilitate a specific housing development project.

(2) It is brought with respect to actions taken pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3 of this division, pursuant to Section 65589.5, 65863.6, 65915, or 66474.2 or pursuant to Chapter 4.2 (commencing with Section 65913).

A cause of action brought pursuant to this subdivision shall not be maintained until 60 days have expired following notice to the city or county clerk by the party bringing the cause of action, or his or her representative, specifying the deficiencies of the general plan, specific plan, or zoning ordinance. A cause of action brought pursuant to this subdivision shall accrue 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first. A notice or cause of action brought by one party pursuant to this subdivision shall not bar filing of a notice and initiation of a cause of action by any other party.

(e) Upon the expiration of the time limits provided for in this section, all persons are barred from any further action or proceeding.

(f) Notwithstanding Sections 65700 and 65803, or any other provision of law, this section shall apply to charter cities.

(g) Except as provided in subdivision (d), this section shall not affect any law prescribing or authorizing a shorter period of limitation than that specified herein.

(h) Except as provided in paragraph (4) of subdivision (c), this section shall be applicable to those decisions of the legislative body of a city, county, or city and county made pursuant to this division on or after January 1, 1984.

SEC. 6. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) The Legislature finds all of the following:

(1) The lack of affordable housing is a critical problem which threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments which limit the approval of affordable housing, increase the cost of land for affordable housing, and require that high fees and exactions be paid by producers of potentially affordable housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions which result in disapproval of affordable housing projects, reduction in density of affordable housing projects, and excessive standards for affordable housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible affordable housing developments which contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without meeting the provisions of subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands to urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project affordable to very low, low- or moderate-income households or condition approval in a manner which renders the project infeasible for development for the use of very low, low- or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588 and that is in substantial compliance with this article, and the development project is not needed for the jurisdiction to meet its share of the regional housing need for very low, low-, or moderate-income housing.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and

there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) Approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the development at a different site, including those sites identified pursuant to paragraph (1) of subdivision (c) of Section 65583, without rendering the development unaffordable to low- and moderate-income households.

(5) The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(6) The development project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element pursuant to this article.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with written development standards, conditions, and policies appropriate to, and consistent with, meeting the quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583. Nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law which are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of affordable housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Affordable to very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(3) "Area median income" shall mean area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(4) "Neighborhood" means a planning area commonly identified as such in a community's planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(5) "Disapprove the development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including a reduction of allowable densities or the percentage of a lot which may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, which have a substantial adverse effect on the viability or affordability of a housing development affordable to very low, low-, or moderate-income households, and the denial of the development

or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of very low, low-, or moderate-income households without properly making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled.

(*l*) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure, all or part of the record may be filed (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing

the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

SEC. 7. Section 65915 of the Government Code is amended to read:

65915. (a) When a developer of housing proposes a housing development within the jurisdiction of the local government, the city, county, or city and county shall provide the developer incentives for the production of lower income housing units within the development if the developer meets the requirements set forth in subdivisions (b) and (c). The city, county, or city and county shall adopt an ordinance which shall specify the method of providing developer incentives.

(b) When a developer of housing agrees or proposes to construct at least (1) 20 percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (2) 10 percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code, or (3) 50 percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code, a city, county, or city and county shall either (1) grant a density bonus and at least one of the concessions or incentives identified in subdivision (h) unless the city, county, or city and county makes a written finding that the additional concession or incentive is not required in order to provide for affordable housing costs as defined in Section 50052.5 of the Health and Safety Code or for rents for the targeted units to be set as specified in subdivision (c), or (2) provide other incentives of equivalent financial value based upon the land cost per dwelling unit.

(c) A developer shall agree to and the city, county, or city and county shall ensure continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income. If a city, county, or city and county does not grant at least one additional concession or incentive pursuant to paragraph (1) of subdivision (b), the developer shall agree to and the city, county, or city and county shall ensure continued affordability for 10 years of all lower income housing units receiving a density bonus.

(d) A developer may submit to a city, county, or city and county a preliminary proposal for the development of housing pursuant to this section prior to the submittal of any formal requests for general plan amendments, zoning amendments, or subdivision map

approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the housing developer in writing of the procedures under which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards which would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) The housing developer shall show that the waiver or modification is necessary to make the housing units economically feasible.

(f) For the purposes of this chapter, "density bonus" means a density increase of at least 25 percent, unless a lesser percentage is elected by the developer, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the developer to the city, county, or city and county. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units which is equal to 10 or 20 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(g) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For purposes of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(h) For purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office,

industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county which result in identifiable cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(i) If a developer agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, city and county, or county may, at its discretion, grant more than one density bonus.

SEC. 8. Section 65950 of the Government Code is amended to read:

65950. (a) Any public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.

(2) Ninety days from the date of certification by the lead agency of the environmental impact report if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project and all of the following conditions are met:

(A) The development project is affordable to very low or low-income households, as defined by Sections 50105 and 50079.5 of the Health and Safety Code, respectively.

(B) Prior to the application being deemed complete for the development project pursuant to Article 3 (commencing with Section 65940), the lead agency received written notice from the project applicant that an application has been made or will be made for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance from a public agency or federal agency, and the notice specifies the financial assistance that has been applied for or will be applied for and the deadline for application for that assistance, the requirement that one of the approvals of the development project by the lead agency is a prerequisite to the application for or approval of the application for financial assistance, and that the financial assistance is necessary for the project to be affordable as required pursuant to subparagraph (A).

(C) There is confirmation that the application has been made to the public agency or federal agency prior to certification of the environmental impact report.

(3) Sixty days from the date of adoption by the lead agency of the negative declaration if a negative declaration is completed and adopted for the development project.

(4) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) if the project is exempt from the California Environmental Quality Act.

(b) Nothing in this section precludes a project applicant and a public agency from mutually agreeing in writing to an extension of any time limit provided by this section pursuant to Section 65957.

(c) For purposes of this section, "lead agency" and "negative declaration" shall have the same meaning as those terms are defined in Sections 21067 and 21064 of the Public Resources Code, respectively.

SEC. 9. The Legislature finds and declares both of the following:

(a) The amendments made by this act to subdivision (c) of Section 65009 of the Government Code, excluding the portion of the amendment related to middle-income households, are declaratory of existing law.

(b) The amendments made by this act to Section 65915 of the Government Code are declaratory of existing law.

SEC. 10. Sections 1 to 4, inclusive, of this act shall apply only to accommodations where the date of delivery to the public entity of the notice of intent to withdraw pursuant to subdivision (a) of Section 7060.4 of the Government Code is on or after January 1, 2000. Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code as it existed prior to this act shall continue to apply to any accommodations that are withdrawn pursuant to a notice of intent to withdraw that has been delivered to a public entity prior to January 1, 2000.

SEC. 11. 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 969

An act to amend Sections 116775, 116780, and 116785 of, and to add Section 116786 to, the Health and Safety Code, relating to drinking water.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 116775 of the Health and Safety Code is amended to read:

116775. The Legislature hereby finds and declares that the utilization of the waters of the state by residential consumers for general domestic purposes, including drinking, cleaning, washing, and personal grooming and sanitation of the people is a right that should be interfered with only when necessary for specified health and safety purposes or to protect the quality of the waters of the state. The Legislature further finds that variation in water quality, and particularly in water hardness, throughout the state often requires that onsite water softening or conditioning be available to domestic consumers to ensure their right to a water supply that is effective and functional for domestic requirements of the residential household, but that residential water softening or conditioning appliances shall be available only as authorized in this article.

SEC. 2. Section 116780 of the Health and Safety Code is amended to read:

116780. (a) Unless the context otherwise requires the definitions in this section govern the construction of this article.

(b) "Clock control" means the system controlling the periodic automatic regeneration of a residential water softening or conditioning appliance that is based upon a predetermined and preset time schedule.

(c) "Demand control" means the system controlling the periodic automatic regeneration of a residential water softening or conditioning appliance that is based either upon a sensor that detects imminent exhaustion of the active softening or conditioning material or upon the measurement of the volume of water passing through the appliance. A demand control system activates regeneration based upon the state of the equipment and its ability to continue the softening process.

(d) "Fully manual regeneration" means the method of regeneration of a residential water softening or conditioning appliance in which operations are performed manually and in which dry salt is added directly to the ion-exchanger tank after sufficient water is removed to make room for the salt.

(e) "Hardness" means the total of all dissolved calcium, magnesium, iron and other heavy metal salts, that interact with soaps and detergents in a manner that the efficiency of soaps and detergents for cleansing purposes is impaired. Hardness is expressed in grains per gallon or milligrams per liter as if all such salts were present as calcium carbonate.

(f) "Local agency" means a city, county, city and county, district, or any other political subdivision of the state.

(g) "Manually initiated control" means the system controlling the periodic regeneration of a residential water softening or conditioning appliance in which all operations, including bypass of hard water and return to service, are performed automatically after manual initiation.

(h) "Regeneration" means the phase of operation of a water softening or conditioning appliance whereby the capability of the appliance to remove hardness from water is renewed by the application of a brine solution of sodium or potassium chloride salt to the active softening or conditioning material contained therein followed by a subsequent rinsing of the active softening or conditioning material.

(i) "Salt efficiency rating" means the efficiency of the use of sodium chloride salt in the regeneration of a water softening appliance, expressed in terms of hardness removal capacity of the appliance per pound of salt used in the regeneration process. The units of salt efficiency rating are grains of hardness removed per pound of salt used. One grain of hardness per gallon is approximately equivalent to 17.1 milligrams of hardness per liter.

SEC. 3. Section 116785 of the Health and Safety Code is amended to read:

116785. Except as provided in Section 116786, a residential water softening or conditioning appliance may be installed only if either of the following apply:

(a) The regeneration of the appliance is performed at a nonresidential facility separate from the location of the residence where the appliance is used.

(b) The regeneration of the appliance discharges to the community sewer system and all of the following conditions are satisfied:

(1) The appliance activates regeneration by demand control.

(2) An appliance installed on or after January 1, 2000, shall be certified by a third party rating organization using industry standards to have a salt efficiency rating of no less than 3,350 grains of hardness removed per pound of salt used in regeneration. An appliance installed on or after January 1, 2002, shall be certified by a third party rating organization using industry standards to have a salt efficiency rating of no less than 4,000 grains of hardness removed per pound of salt used in regeneration.

(3) The installation of the appliance is accompanied by the simultaneous installation of the following softened or conditioned water conservation devices on all fixtures using softened or conditioned water, unless the devices are already in place or are prohibited by local and state plumbing and building standards or unless the devices will adversely restrict the normal operation of the fixtures:

(A) Faucet flow restrictors.

(B) Shower head restrictors.

(C) Toilet reservoir dams.

(D) A piping system installed so that untreated (unsoftened or unconditioned) supply water is carried to hose bibs and sill cocks that serve water to the outside of the house, except that bypass valves may be installed on homes with slab foundations constructed prior to the date of installation; or condominiums constructed prior to the date of installation; or otherwise where a piping system is physically inhibited.

SEC. 4. Section 116786 is added to the Health and Safety Code, to read:

116786. (a) Notwithstanding subdivision (b) of Section 116785, a local agency may, by ordinance, limit the availability, or prohibit the installation, of residential water softening or conditioning appliances that discharge to the community sewer system if the local agency makes all of the following findings and includes them in the ordinance:

(1) The local agency is not in compliance with waste discharge requirements issued by the California regional water quality control board pursuant to Chapter 5.5 (commencing with Section 13370) of Division 7 of the Water Code.

(2) Limiting the availability, or prohibiting the installation, of the appliances is the only available means of achieving compliance with waste discharge requirements issued by the California regional water quality control board.

(3) The local agency has adopted and is enforcing regulatory requirements that limit the volumes and concentrations of saline discharges from nonresidential sources in the community waste disposal system to the extent technologically and economically feasible.

(b) Notwithstanding subdivision (b) of Section 116785, a local agency may, by ordinance, limit the availability, or prohibit the installation, of residential water softening or conditioning appliances that discharge to the community sewer system if the local agency makes all of the following findings and includes them in the ordinance:

(1) The local agency is not in compliance with water reclamation requirements, or a master reclamation permit, issued by the California regional water quality control board pursuant to Article 4

(commencing with Section 13520) of Chapter 7 of Division 7 of the Water Code.

(2) Limiting the availability, or prohibiting the installation, of the appliances is the only available means of achieving compliance with the water reclamation requirements or the master reclamation permit issued by a California regional water quality control board.

(3) The local agency has adopted, and is enforcing, regulatory requirements that limit the volumes and concentrations of saline discharges from nonresidential sources to the community waste disposal system to the extent technologically and economically feasible.

(c) Local agency findings shall be substantiated by an independent study of discharges from all sources of salinity, including, but not limited to, residential water softening or conditioning appliances, residential consumptive use, industrial and commercial discharges, and seawater or brackish water infiltration and inflow into the sewer collection system. The study shall quantify, to the greatest extent feasible, the total discharge from each source of salinity and identify remedial actions taken to reduce the discharge of salinity into the community sewer system from each source, to the extent technologically and economically feasible, to bring the local agency into compliance with waste discharge requirements, water reclamation requirements, or a master reclamation permit, prior to limiting or prohibiting the use of residential water softening or conditioning appliances.

(d) Any ordinance adopted pursuant to this section shall be prospective in nature and may not require the removal of residential water softening or conditioning appliances that are installed before the effective date of the ordinance.

(e) To comply with this section, any local agency described in subdivision (f) of Section 116780 is authorized to adopt an ordinance .

(f) This section shall become operative on January 1, 2003.

CHAPTER 970

An act to amend Sections 4850 and 4850.5 of the Labor Code, relating to public employee disability.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 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 county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation office, 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 a 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 that 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, or any county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation 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 also excludes employees of a county probation 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 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 probation officers, group counselors, juvenile services officers, or any officer or employee of a probation office, 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 counties 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.

SEC. 1.5. 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 county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation 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 a 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 that 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, or any county probation officer, group counselor, or juvenile services officer or any officer, or employee of a probation 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 also excludes employees of a county probation 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 probation officers, group counselors, juvenile service officers, or any officer or employee of a probation office, 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.

SEC. 2. Section 4850.5 of the Labor Code is amended to read:

4850.5. Any firefighter employed by the County of San Luis Obispo, and the sheriff or any officer or employee of the sheriff's office of the County of San Luis Obispo, and any county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation office, employed by the County of San Luis Obispo, shall, upon the adoption of a resolution of the board of supervisors so declaring, be entitled to the benefits of this article, if otherwise entitled to these benefits, even though the employee is not 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).

SEC. 3. The Legislature finds and declares with respect to Section 1.5 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.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 4850 of the Labor Code proposed by both this bill and AB 224. 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 4850 of the Labor Code, and (3) this bill is enacted after AB 224, in which case Section 1 of this bill shall not become operative.

SEC. 5. Section 3 of this act shall only become operative if Section 1.5 of this act becomes operative.

CHAPTER 971

An act to amend Sections 1156, 3562, 3566, 3579, 20394, 20636, and 22810.5 of the Government Code, relating to higher education labor relations.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1156 of the Government Code is amended to read:

1156. (a) Any eligible employee who is participating in a flexible benefits program may elect to receive one or more benefits that

qualify to be excluded from gross income in lieu of a portion of his or her salary.

(b) For purposes of this section, an "eligible employee" means any of the following:

(1) An employee excluded from the definition of "state employee" in Section 3513.

(2) A "managerial employee" as defined in Section 3513.

(3) A "confidential employee" as defined in Section 3513 and Section 3562.

(4) A "supervisory employee" as defined in Section 3580.3.

(5) An officer or employee of the State of California in the executive or judicial branch of government who is not a state civil service employee pursuant to Part 2 (commencing with Section 18500) of Division 5 of Title 2.

(6) A "state employee," as defined by Section 3513 or employed by the state as provided for in Article VI of the Constitution.

(c) Any eligible employee participating in the flexible benefits program shall be subject to federal laws and implementing regulations of the Department of Personnel Administration which affects the flexible benefit program throughout the period of the employee's enrollment.

(d) Unless the trustee or the administrator of the state's flexible benefit program is the Controller or another state officer, that program shall be administered in compliance with the federal Employee Retirement Income Security Act of 1974 (ERISA: 29 U.S.C. Sec. 1001 et seq.).

(e) As a condition of participating in a flexible benefits program, each eligible employee shall provide evidence, in a manner satisfactory to the Department of Personnel Administration, that the employee is covered by a basic health benefits plan, and his or her agreement to remain covered for the period of participation in the flexible benefits plan.

(f) There is in the State Treasury the Flexelect Benefit Fund which, notwithstanding Section 13340, is continuously appropriated without regard to fiscal years to the Department of Personnel Administration for expenditure to implement the flexible benefits program and to pay the related administrative costs. The fund shall consist of the amounts received from state employee compensation excluded from gross income and transmitted to the Flexelect Benefit Fund, income of whatever nature earned on the money in the Flexelect Benefit Fund during any fiscal year and credited to the fund, and amounts appropriated therefor in the annual Budget Act and other statutes.

(g) On or after July 1, 1990, any funds remaining in the State Employees' Dependent Care Assistance and Health Care Assistance Fund shall be transmitted into the account in the Flexelect Benefit Fund for the administrative expenses of the Controller's office to pay the related administrative costs.

SEC. 2. Section 3562 of the Government Code is amended to read:

3562. As used in this chapter:

(a) "Arbitration" means a method of resolving a rights dispute under which the parties to a controversy must accept the award of a third party.

(b) "Board" means the Public Employment Relations Board established pursuant to Section 3513.

(c) "Certified organization" means an employee organization which has been certified by the board as the exclusive representative of the employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3573).

(d) "Confidential employee" means any employee who is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information which contributes significantly to the development of those management positions.

(e) "Employee" or "higher education employee" means any employee of the Regents of the University of California, the Directors of Hastings College of the Law, or the Trustees of the California State University. However, managerial and confidential employees and employees whose principal place of employment is outside the State of California at a worksite with 100 or fewer employees shall be excluded from coverage under this chapter. The board may find student employees whose employment is contingent on their status as students are employees only if the services they provide are unrelated to their educational objectives, or, that those educational objectives are subordinate to the services they perform and that coverage under this chapter would further the purposes of this chapter.

(f) (1) "Employee organization" means any organization of any kind in which higher education employees participate and which exists for the purpose, in whole or in part, of dealing with higher education employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of employees. An organization that represents one or more employees whose principal worksite is located outside the State of California is an employee organization only if it has filed with the board and with the employer a statement agreeing, in consideration of obtaining the benefits of status as an employee organization pursuant to this chapter, to submit to the jurisdiction of the board. The board shall promulgate the form of the statement.

(2) "Employee organization" shall also include any person that an employee organization authorizes to act on its behalf. An academic senate, or other similar academic bodies, or divisions thereof, shall not be considered employee organizations for the purposes of this chapter.

(g) "Employer" or "higher education employer" means the regents in the case of the University of California, the Directors in the case of Hastings College of the Law, and the trustees in the case of the California State University, including any person acting as an agent of an employer.

(h) "Employer representative" means any person or persons authorized to act in behalf of the employer.

(i) "Exclusive representative" means any recognized or certified employee organization or person it authorizes to act on its behalf.

(j) "Impasse" means that the parties have reached a point in meeting and conferring at which their differences in positions are such that further meetings would be futile.

(k) "Managerial employee" means any employee having significant responsibilities for formulating or administering policies and programs. No employee or group of employees shall be deemed to be managerial employees solely because the employee or group of employees participates in decisions with respect to courses, curriculum, personnel and other matters of educational policy. A department chair or head of a similar academic unit or program who performs the foregoing duties primarily on behalf of the members of the academic unit or program shall not be deemed a managerial employee solely because of those duties.

(*l*) "Mediation" means the efforts of a third person, or persons, functioning as intermediaries, to assist the parties in reaching a voluntary resolution to an impasse.

(m) "Meet and confer" means the performance of the mutual obligation of the higher education employer and the exclusive representative of its employees to meet at reasonable times and to confer in good faith with respect to matters within the scope of representation and to endeavor to reach agreement on matters within the scope of representation. The process shall include adequate time for the resolution of impasses. If agreement is reached between representatives of the higher education employer and the exclusive representative, they shall jointly prepare a written memorandum of the understanding, which shall be presented to the higher education employer for concurrence. However, these obligations shall not compel either party to agree to any proposal or require the making of a concession.

(n) "Person" means one or more individuals, organizations, associations, corporations, boards, committees, commissions, agencies, or their representatives.

(o) "Professional employee" means:

(1) Any employee engaged in work: (A) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (B) involving the consistent exercise of discretion and judgment in its performance; (C) of a character so that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (D)

requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

(2) Any employee who: (A) has completed the courses of specialized intellectual instruction and study described in subparagraph (D) of paragraph (1), and (B) is performing related work under the supervision of a professional person to qualify himself or herself to become a professional employee as defined in paragraph (1).

(p) "Recognized organization" means an employee organization which has been recognized by an employer as the exclusive representative of the employees in an appropriate unit pursuant to Article 5 (commencing with Section 3573).

(q) (1) For purposes of the University of California only, "scope of representation" means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include any of the following:

(A) Consideration of the merits, necessity, or organization of any service, activity, or program established by law or resolution of the regents or the directors, except for the terms and conditions of employment of employees who may be affected thereby.

(B) The amount of any fees which are not a term or condition of employment.

(C) Admission requirements for students, conditions for the award of certificates and degrees to students, and the content and supervision of courses, curricula, and research programs, as those terms are intended by the standing orders of the regents or the directors.

(D) Procedures and policies to be used for the appointment, promotion, and tenure of members of the academic senate, the procedures to be used for the evaluation of the members of the academic senate, and the procedures for processing grievances of members of the academic senate. The exclusive representative of members of the academic senate shall have the right to consult and be consulted on matters excluded from the scope of representation pursuant to this subparagraph. If the academic senate determines that any matter in this subparagraph should be within the scope of representation, or if any matter in this subparagraph is withdrawn from the responsibility of the academic senate, the matter shall be within the scope of representation.

(2) All matters not within the scope of representation are reserved to the employer and may not be subject to meeting and conferring, provided that nothing herein may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

(r) (1) For purposes of the California State University only, "scope of representation" means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include:

(A) Consideration of the merits, necessity, or organization of any service, activity, or program established by statute or regulations adopted by the trustees, except for the terms and conditions of employment of employees who may be affected thereby.

(B) The amount of any student fees which are not a term or condition of employment.

(C) Admission requirements for students, conditions for the award of certificates and degrees to students, and the content and conduct of courses, curricula, and research programs.

(D) Criteria and standards to be used for the appointment, promotion, evaluation, and tenure of academic employees, which shall be the joint responsibility of the academic senate and the trustees. The exclusive representative shall have the right to consult and be consulted on matters excluded from the scope of representation pursuant to this subparagraph. If the trustees withdraw any matter in this subparagraph from the responsibility of the academic senate, the matter shall be within the scope of representation.

(E) The amount of rental rates for housing charged to California State University employees.

(2) All matters not within the scope of representation are reserved to the employer and may not be subject to meeting and conferring, provided that nothing herein may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

SEC. 3. Section 3566 of the Government Code is amended to read:

3566. The Trustees of the California State University shall adopt reasonable rules and regulations for all of the following:

(a) Registering employee organizations, as defined in Section 3562, and bona fide associations, as defined in Section 1150.

(b) Determining the status of organizations and associations as employee organizations or bona fide associations.

(c) Identifying the officers and representatives who officially represent employee organizations and bona fide associations.

SEC. 4. Section 3579 of the Government Code is amended to read:

3579. (a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the

employer, the extent to which the employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account factors such as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the higher education employer, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of the higher education employer and its employees to serve students and the public.

(4) The number of employees and classifications in a proposed unit, and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employee groups or any proliferation of units among the employees of the employer.

(b) There shall be a presumption that professional employees and nonprofessional employees shall not be included in the same representation unit. However, the presumption shall be rebuttable, depending upon what the evidence pertinent to the criteria set forth in subdivision (a) establishes.

(c) There shall be a presumption that all employees within an occupational group or groups located principally within the State of California shall be included within a single representation unit. However, the presumption shall be rebutted if there is a preponderance of evidence that a single representation unit is inconsistent with the criteria set forth in subdivision (a) or with the purposes of this chapter.

(d) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a single, separate unit of representation. Skilled crafts employees shall include, but not necessarily be limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers. The single unit of representation shall include not less than all skilled crafts employees at a campus or at a Lawrence Laboratory.

(e) Notwithstanding the foregoing provisions of this section, the only appropriate representation units including members of the academic senate of the University of California shall be either a single

statewide unit consisting of all eligible members of the senate, or divisional units consisting of all eligible members of a division of the senate. In addition to the limitations of subdivision (q) of Section 3562, the scope of representation of any divisional unit shall be limited to those matters which have customarily been determined on a division basis, but the employer shall consult with the exclusive representative of a division on matters which would be within the scope of representation or consultation of a statewide representative. When 35 percent of the eligible members of the academic senate are represented by an exclusive representative or representatives in divisional units, the board, on petition of a representative or of an organization comprised of those representatives, shall conduct an election to determine if the eligible members of the entire senate wish thereafter to be represented by a representative or organization in a single unit on all matters within the scope of representation. Any other exclusive representative or organization of representatives or any employee organization meeting the requirements of subdivision (a) of Section 3577 shall be entitled, on petition, to appear on the ballot, and in the event no choice receives a majority of the votes cast, the runoff provisions of subdivision (a) of Section 3577 shall be applicable.

(f) The board shall not determine that any unit is appropriate if it includes, together with other employees, employees who are defined as peace officers pursuant to subdivisions (b) and (c) of Section 830.2 of the Penal Code.

SEC. 5. Section 20394 of the Government Code is amended to read:

20394. "State peace officer/firefighter member" also includes the employees of a California State University police department, established pursuant to Section 89560 of the Education Code, who have been designated as peace officers as defined in Section 830.2 of the Penal Code, and who are (a) members represented by Public Safety Unit No. 8, or (b) members excluded from the definition of employee in Section 3562 or are supervisory employees as defined in Section 3580.3, provided that these employees have responsibility for the direct supervision of the state peace officer/firefighter members represented in Public Safety Unit No. 8. The Trustees of the California State University shall notify this system when employees meet these conditions and whenever a state peace officer/firefighter member ceases to meet the conditions.

SEC. 6. Section 20636 of the Government Code is amended to read:

20636. (a) "Compensation earnable" by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.5.

(b) (1) "Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a

full-time basis during normal working hours. "Payrate," for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).

(2) The computation for any leave without pay of a member shall be based on the compensation earnable by him or her at the beginning of the absence.

(3) The computation for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in state service.

(c) (1) Special compensation of a member includes any payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

(2) Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the board determines is received by similarly situated members in the closest related group or class that is in addition to payrate, subject to the limitations of paragraph (2) of subdivision (e).

(3) Special compensation shall be for services rendered during normal working hours and, when reported to the board, the employer shall identify the pay period in which the special compensation was earned.

(4) Special compensation may include the full monetary value of normal contributions paid to the board by the employer, on behalf of the member and pursuant to Section 20691, provided that the employer's labor policy or agreement specifically provides for the inclusion of the normal contribution payment in compensation earnable.

(5) The monetary value of any service or noncash advantage furnished by the employer to the member, except as expressly and specifically provided in this part, shall not be special compensation unless regulations promulgated by the board specifically determine that value to be "special compensation."

(6) The board shall promulgate regulations that delineate more specifically and exclusively what constitutes "special compensation" as used in this section. A uniform allowance, the monetary value of employer-provided uniforms, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under Section 201 et seq. of Title 29 of the United States Code shall be included as special compensation and appropriately defined in those regulations.

(7) Special compensation does not include any of the following:

(A) Final settlement pay.

(B) Payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise.

(C) Any other payments the board has not affirmatively determined to be special compensation.

(d) Notwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.

(e) (1) As used in this part, "group or class of employment" means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work related grouping. Under no circumstances shall one employee be considered a group or class.

(2) Increases in compensation earnable granted to any employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the board that establish reasonable standards for granting exceptions.

(f) As used in this part, "final settlement pay" means any pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. The board shall promulgate regulations that delineate more specifically what constitutes final settlement pay.

(g) (1) Notwithstanding subdivision (a), "compensation earnable" for state members means the average monthly compensation, as determined by the board, upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, and is composed of the payrate and special compensation of the member. The computation for any absence of a member shall be based on the compensation earnable by him or her at the beginning of the absence and that for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in that state service.

(2) Notwithstanding subdivision (b), "payrate" for state members means the average monthly remuneration paid in cash out of funds paid by the employer to similarly situated members of the same group or class of employment, in payment for the member's services or for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence. "Payrate" for state members shall include:

(A) Any amount deducted from a member's salary for any of the following:

(i) Participation in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) of Part 2.6.

(ii) Payment for participation in a retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code.

(iii) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(iv) Participation in a flexible benefits program.

(B) Any payment in cash by the member's employer to one other than an employee for the purpose of purchasing an annuity contract for a member under an annuity plan that meets the requirements of Section 403(b) of Title 26 of the United States Code.

(C) Employer "pick up" of member contributions that meets the requirements of Section 414(h)(2) of Title 26 of the United States Code.

(D) Any disability or workers' compensation payments to safety members in accordance with Section 4800 of the Labor Code.

(E) Temporary industrial disability payments pursuant to Article 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

(F) Any other payments the board may determine to be within "payrate."

(3) Notwithstanding subdivision (c), "special compensation" for state members shall mean all of the following:

(A) The monetary value, as determined by the board, of living quarters, board, lodging, fuel, laundry, and other advantages of any nature furnished a member by his or her employer in payment for the member's services.

(B) Any compensation for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work shift), educational incentive pay, maintenance and noncash payments, out-of-class pay, marksmanship pay, hazard pay, motorcycle pay, paramedic pay, emergency medical technician pay, POST certificate pay, and split shift differential.

(C) Compensation for uniforms, except as provided in Section 20632.

(D) Any other payments the board may determine to be within "special compensation."

(4) Neither "payrate" nor "special compensation" for state members shall include any of the following:

(A) The provision by the state employer of any medical or hospital service or care plan or insurance plan for its employees (other than the purchase of annuity contracts as described below in this subdivision), any contribution by the employer to meet the premium or charge for that plan, or any payment into a private fund to provide health and welfare benefits for employees.

(B) Any payment by the state employer of the employee portion of taxes imposed by the Federal Insurance Contribution Act.

(C) Amounts not available for payment of salaries and that are applied by the employer for the purchase of annuity contracts including those that meet the requirements of Section 403(b) of Title 26 of the United States Code.

(D) Any benefits paid pursuant to Article 5 (commencing with Section 19878) of Chapter 2.5 of Part 2.6.

(E) Employer payments that are to be credited as employee contributions for benefits provided by this system, or employer payments that are to be credited to employee accounts in deferred compensation plans; provided, that the amounts deducted from a member's wages for participation in a deferred compensation plan shall not be considered to be "employer payments."

(F) Payments for unused vacation, annual leave, personal leave, sick leave, or compensating time off, whether paid in lump sum or otherwise.

(G) Final settlement pay.

(H) Payments for overtime, including pay in lieu of vacation or holiday.

(I) Compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobiles, and bonuses for duties performed after the member's regular work shift.

(J) Amounts not available for payment of salaries and which are applied by the employer for any of the following:

(i) The purchase of a retirement plan which meets the requirements of Section 401(k) of Title 26 of the United States Code.

(ii) Payment into a money purchase pension plan and trust which meets the requirements of Section 401(a) of Title 26 of the United States Code.

(K) Payments made by the employer to or on behalf of its employees who have elected to be covered by a flexible benefits program, where those payments reflect amounts that exceed the employee's salary.

(L) Any other payments the board may determine are not "payrate" or "special compensation."

(5) If the provisions of this subdivision, including the board's determinations pursuant to subparagraph (F) of paragraph (2) and subparagraph (D) of paragraph (3), are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or 3560, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature in the annual Budget Act. No memorandum of understanding reached pursuant to Section 3517.5 or 3560 may exclude from the definition of either "payrate" or

"special compensation" a member's base salary payments or payments for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence. If any items of compensation earnable are included by memorandum of understanding as "payrate" or "special compensation" for retirement purposes for represented and higher education employees pursuant to this paragraph, the Department of Personnel Administration or the Trustees of the California State University shall obtain approval from the board for that inclusion.

(6) (A) Subparagraph (B) of paragraph (3) of this subdivision prescribes that compensation earnable includes any compensation for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work shift), educational incentive pay, maintenance and noncash payments, out-of-class pay, marksmanship pay, hazard pay, motorcycle pay, paramedic pay, emergency medical technician pay, POST certificate pay, and split shift differential; and includes compensation for uniforms, except as provided in Section 20632; and subparagraph (I) of paragraph (4) excludes from compensation earnable compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobile, and bonuses for duties performed after regular work shift.

(B) Notwithstanding subparagraph (A) of this paragraph, the Department of Personnel Administration shall determine which payments and allowances that are paid by the state employer shall be considered compensation for retirement purposes for any employee who either is excluded from the definition of state employee in Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service.

(C) Notwithstanding subparagraph (A) of this paragraph, the Trustees of the California State University shall determine which payments and allowances that are paid by the trustees shall be considered compensation for retirement purposes for any managerial employee, as defined in Section 3562, or supervisory employee as defined in Section 3580.3.

SEC. 7. Section 22810.5 of the Government Code is amended to read:

22810.5. (a) Participation in a low-cost health benefits plan, developed and authorized by the board specifically as part of a flexible benefits program, is restricted to active state employees who are (1) excluded from the definition of state employee in Section 3513; (2) supervisory employees, as defined in Section 3580.3; (3) employees of the executive branch of government who are not members of the civil service; and (4) employees of the California State University System, as defined in Section 3562 and supervisory employees, as defined in Section 3580.3.

(b) If this section is in conflict with a memorandum of understanding reached pursuant to Section 3517.5 or Chapter 12

(commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding is 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.

CHAPTER 972

An act to amend Section 4107 of, and to add Sections 1103 and 20101 to, the Public Contract Code, relating to public contracts.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. The Legislature hereby finds and declares that the establishment by public agencies of a uniform system to evaluate the ability, competency, and integrity of bidders on public works projects is in the public interest, will result in the construction of public works projects of the highest quality for the lowest costs, and is in furtherance of the objectives stated in Section 100 of the Public Contract Code.

SEC. 2. Section 1103 is added to the Public Contract Code, to read:

1103. "Responsible bidder," as used in this part, means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.

The Legislature finds and declares that this section is declaratory of existing law.

SEC. 3. Section 4107 of the Public Contract Code is amended to read:

4107. A prime contractor whose bid is accepted may not:

(a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid after having had a reasonable opportunity to do so fails or refuses to execute a written contract, when that written contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2) When the listed subcontractor becomes bankrupt or insolvent.

(3) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

(9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

(b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

SEC. 4. Section 20101 is added to the Public Contract Code, to read:

20101. (a) Except as provided in Section 20111.5, a public entity subject to this part may require that each prospective bidder for a contract complete and submit to the entity a standardized questionnaire and financial statement in a form specified by the entity, including a complete statement of the prospective bidder's experience in performing public works. The standardized questionnaire may not require prospective bidders to disclose any violations of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code committed prior to January 1, 1998, if a violation was based on a subcontractor's failure to comply with these provisions and the bidder had no knowledge of the subcontractor's violations. The Department of Industrial Relations, in collaboration with affected agencies and interested parties, shall develop model guidelines for rating bidders, and draft the standardized questionnaire, that may be used by public entities for the purposes of this part. The Department of Industrial Relations, in developing the standardized questionnaire, shall consult with affected public agencies, cities and counties, the construction industry, the surety industry, and other interested parties. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaires and financial statements shall not be public records and shall not be open to public inspection; however, records of the names of contractors applying for prequalification status shall be public records subject to disclosure under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(b) Any public entity requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine both the minimum requirements permitted for qualification to bid, and the type and size of the contracts upon which each bidder shall be deemed qualified to bid. The uniform system of rating prospective bidders shall be based on objective criteria.

(c) A public entity may establish a process for prequalifying prospective bidders pursuant to this section on a quarterly basis and a prequalification pursuant to this process shall be valid for one calendar year following the date of initial prequalification.

(d) Any public entity requiring prospective bidders on a public works project to prequalify pursuant to this section shall establish a process that will allow prospective bidders to dispute their proposed prequalification rating prior to the closing time for receipt of bids. The appeal process shall include the following:

(1) Upon request of the prospective bidder, the public entity shall provide notification to the prospective bidder in writing of the basis for the prospective bidder's disqualification and any supporting

evidence that has been received from others or adduced as a result of an investigation by the public entity.

(2) The prospective bidder shall be given the opportunity to rebut any evidence used as a basis for disqualification and to present evidence to the public entity as to why the prospective bidder should be found qualified.

(3) If the prospective bidder chooses not to avail itself of this process, the proposed prequalification rating may be adopted without further proceedings.

(e) For the purposes of subdivision (a), a financial statement shall not be required from a contractor who has qualified as a Small Business Administration entity pursuant to paragraph (1) of subdivision (d) of Section 14837 of the Government Code, when the bid is no more than 25 percent of the qualifying amount provided in paragraph (1) of subdivision (d) of Section 14837 of the Government Code.

(f) Nothing in this section shall preclude an awarding agency from prequalifying or disqualifying a subcontractor. The disqualification of a subcontractor by an awarding agency does not disqualify an otherwise prequalified contractor.

SEC. 5. Nothing contained in this act shall apply to services procured pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

CHAPTER 973

An act to amend Section 2655 of the Unemployment Insurance Code, relating to unemployment disability, and making an appropriation therefor.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 2655 of the Unemployment Insurance Code is amended to read:

2655. (a) Except as provided in subdivisions (b), (c), and (d), an individual's "weekly benefit amount" shall be the amount appearing in column B in the table set forth in this subdivision on the line of which in column A of the table there appears the wage bracket containing the amount of wages paid to the individual for employment by employers during the quarter of his or her disability base period in which wages were the highest.

A Amount of wages in highest quarter	B Weekly benefit amount
$75–1,149.99	$50
1,150–1,174.99	51
1,175–1,199.99	52
1,200–1,224.99	53
1,225–1,249.99	54
1,250–1,274.99	55
1,275–1,299.99	56
1,300–1,324.99	57
1,325–1,349.99	58
1,350–1,374.99	59
1,375–1,399.99	60
1,400–1,424.99	61
1,425–1,449.99	62
1,450–1,474.99	63
1,475–1,499.99	64
1,500–1,524.99	65
1,525–1,549.99	66
1,550–1,574.99	67
1,575–1,599.99	68
1,600–1,624.99	69
1,625–1,649.99	70
1,650–1,674.99	71
1,675–1,699.99	72
1,700–1,724.99	73
1,725–1,749.20	74

(b) For periods of disability commencing on or after January 1, 1990, and prior to January 1, 1991, if the amount of wages paid an individual for employment by employers during the quarter of his or her disability base period in which these wages were highest exceeds one thousand seven hundred forty-nine dollars and twenty cents ($1,749.20), the weekly benefit amount shall be 55 percent of these wages divided by 13, but not exceeding two hundred sixty-six dollars ($266) or the maximum workers' compensation temporary disability indemnity weekly benefit amount, whichever is less. If the benefit payable under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

(c) For periods of disability commencing on or after January 1, 1991, but before January 1, 2000, if the amount of wages paid an individual for employment by employers during the quarter of his or

her disability base period in which these wages were highest exceeds one thousand seven hundred forty-nine dollars and twenty cents ($1,749.20), the weekly benefit amount shall be 55 percent of these wages divided by 13, but not exceeding three hundred thirty-six dollars ($336). If the benefit payable under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

(d) For periods of disability commencing on or after January 1, 2000, if the amount of wages paid an individual for employment by employers during the quarter of his or her disability base period in which these wages were highest exceeds one thousand seven hundred forty-nine dollars and twenty cents ($1,749.20), the weekly benefit amount shall be equal to 55 percent of these wages divided by 13, but not exceeding the maximum workers' compensation temporary disability indemnity weekly benefit amount. If the benefit under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

SEC. 2. The Employment Development Department shall report to the Legislature on or before July 1, 2000, on the fiscal impact on the Disability Fund of extending unemployment compensation disability benefits to an individual who is absent from work due to having been granted a family care and medical leave pursuant to Section 12945.2 of the Government Code, or who is absent from work and who would otherwise qualify for a family and medical leave except that his or her employer is exempt from being required to grant that leave pursuant to that section.

CHAPTER 974

An act to amend Sections 11341, 11360, 11404, 11405, 11411, and 11412 of the Business and Professions Code, and Sections 2924, 2924c, 2924f, 2924j, 2924k, 2924*l*, and 2934a of the Civil Code, relating to real estate transactions, and making an appropriation therefor.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. (a) The Legislature hereby finds and declares:

(1) In response to a federal mandate, all states were required to enact a licensing and certification law for real estate appraisers, and California's law was enacted in 1990.

(2) Failure to enact a licensing and certification law could have made real estate loans by federally related financial institutions unavailable in California.

(3) Since 1990, in the peak years, the California Office of Real Estate Appraisers regulated over 18,000 real estate appraisers.

(4) Due to changes in California's real estate marketplace, the number of real estate appraisers licensed and certified in California has declined by approximately 40 percent.

(5) A license fee increase, coupled with cost reductions in the Office of Real Estate Appraisers, is necessary to continue funding the federally mandated appraiser regulatory program in California.

(b) In providing additional funding through license fee increases in Sections 5 and 6 of this act, it is the intent of the Legislature that the Office of Real Estate Appraisers pursue reductions and cost efficiencies leading to a reduction in annual expenditures of five hundred thousand dollars ($500,000) from the 1999–00 fiscal year expenditure authority, beginning in the 2000–01 fiscal year.

SEC. 2. Section 11341 of the Business and Professions Code is amended to read:

11341. A license issued with an effective date of January 1, 2000, or later shall be valid for two years unless otherwise extended or limited by the director.

SEC. 3. Section 11360 of the Business and Professions Code is amended to read:

11360. (a) The director shall adopt regulations governing the process and procedures for renewal of a license which shall include, but not be limited to, continuing education requirements, which shall be reported on the basis of four-year continuing education cycles.

(b) An applicant for renewal of a license shall be required to demonstrate his or her continuing fitness to hold a license prior to its renewal. Applicants shall also fulfill continuing education requirements established pursuant to this section and may certify that they have read and understand all applicable California and federal laws and regulations pertaining to the licensing and certification of real estate appraisers in lieu of being required to take a minimum of four hours of federal and California appraisal-related statutory and regulatory law every four years.

SEC. 4. Section 11404 of the Business and Professions Code is amended to read:

11404. The fee for an original or renewal real estate appraiser license or appraiser trainee license shall not exceed four hundred fifty dollars ($450), which includes the application and issuance fees.

SEC. 5. Section 11405 of the Business and Professions Code is amended to read:

11405. The fee for an original or renewal certification as a state certified real estate appraiser shall not exceed five hundred twenty-five dollars ($525), which includes the application and issuance fees.

SEC. 6. Section 11411 of the Business and Professions Code is amended to read:

11411. There shall be separate accounts in the Real Estate Appraisers Regulation Fund for purposes of administration and for purposes of recovery. These accounts shall be known respectively as the Administration Account and the Recovery Account. On and after January 1, 2003, 5 percent of the amount of any license or certificate fee collected under this part shall be credited to the Recovery Account. The Recovery Account is a continuing appropriation for carrying out this chapter.

SEC. 7. Section 11412 of the Business and Professions Code is amended to read:

11412. (a) On or before January 1, 2002, the director shall determine the number of complaint cases containing judicial findings of fraud that may be eligible for recovery pursuant to future regulations that are closely analogous to those which have been adopted for the Real Estate Recovery Fund established in Chapter 6.5 (commencing with Section 10470) of Part 1. This information shall be used by the director to determine whether a real estate appraiser Recovery Account is necessary or whether to recommend that it should be eliminated.

(b) On or before January 1, 2004, regulations shall be adopted for administration of the Recovery Account, which shall include claims, funding, and administrative procedures closely analogous to those which have been adopted for the Real Estate Recovery Fund established in Chapter 6.5 (commencing with Section 10470) of Part 1.

(c) The statute of limitations for claims against the fund arising between the effective date of this part and the creation of the fund shall be tolled until the date the fund is created.

SEC. 8. Section 2924 of the Civil Code is amended to read:

2924. Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge. Where, by a mortgage created after July 27, 1917, of any estate in real property, other than an estate at will or for years, less than two, or in any transfer in trust made after July 27, 1917, of a like estate to secure the performance of an obligation, a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or is made by a public utility subject to the provisions of the Public Utilities Act, until (a) the trustee, mortgagee, or beneficiary, or any of their authorized agents shall first file for record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or

parcel thereof is situated, a notice of default, identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page, or instrument number, if applicable, where the same is recorded or a description of the mortgaged or trust property and containing a statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred, and setting forth the nature of each breach actually known to the beneficiary and of his or her election to sell or cause to be sold the property to satisfy that obligation and any other obligation secured by the deed of trust or mortgage that is in default, and where the default is curable pursuant to Section 2924c, containing the statement specified in paragraph (1) of subdivision (b) of Section 2924c; (b) not less than three months shall thereafter elapse; and (c) after the lapse of the three months the mortgagee, trustee or other person authorized to take the sale shall give notice of sale, stating the time and place thereof, in the manner and for a time not less than that set forth in Section 2924f. In performing acts required by this article, the trustee shall incur no liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed or trust, or mortgage. A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice. The mailing, publication, and delivery of notices as required herein, and the performance of the procedures set forth in this article, shall constitute privileged communications within Section 47. There is a rebuttable presumption that the beneficiary actually knew of all unpaid loan payments on the obligation owed to the beneficiary and secured by the deed of trust or mortgage subject to the notice of default. However, the failure to include an actually known default shall not invalidate the notice of sale and the beneficiary shall not be precluded from asserting a claim to this omitted default or defaults in a separate notice of default.

SEC. 9. Section 2924c of the Civil Code is amended to read:

2924c. (a) (1) Whenever all or a portion of the principal sum of any obligation secured by deed of trust or mortgage on real property or an estate for years therein hereafter executed has, prior to the maturity date fixed in that obligation, become due or been declared due by reason of default in payment of interest or of any installment of principal, or by reason of failure of trustor or mortgagor to pay, in accordance with the terms of that obligation or of the deed of trust or mortgage, taxes, assessments, premiums for insurance, or advances

made by beneficiary or mortgagee in accordance with the terms of that obligation or of the deed of trust or mortgage, the trustor or mortgagor or his or her successor in interest in the mortgaged or trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any other person having a subordinate lien or encumbrance of record thereon, at any time within the period specified in subdivision (e), if the power of sale therein is to be exercised, or, otherwise at any time prior to entry of the decree of foreclosure, may pay to the beneficiary or the mortgagee or their successors in interest, respectively, the entire amount due, at the time payment is tendered, with respect to (A) all amounts of principal, interest, taxes, assessments, insurance premiums, or advances actually known by the beneficiary to be, and that are, in default and shown in the notice of default, under the terms of the deed of trust or mortgage and the obligation secured thereby, (B) all amounts in default on recurring obligations not shown in the notice of default, and (C) all reasonable costs and expenses, subject to subdivision (c), which are actually incurred in enforcing the terms of the obligation, deed of trust, or mortgage, and trustee's or attorney's fees, subject to subdivision (d), other than the portion of principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust or mortgage shall be reinstated and shall be and remain in force and effect, the same as if the acceleration had not occurred. This section does not apply to bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations or made by a public utility subject to the Public Utilities Code. For the purposes of this subdivision, the term "recurring obligation" means all amounts of principal and interest on the loan, or rents, subject to the deed of trust or mortgage in default due after the notice of default is recorded; all amounts of principal and interest or rents advanced on senior liens or leaseholds which are advanced after the recordation of the notice of default; and payments of taxes, assessments, and hazard insurance advanced after recordation of the notice of default. Where the beneficiary or mortgagee has made no advances on defaults which would constitute recurring obligations, the beneficiary or mortgagee may require the trustor or mortgagor to provide reliable written evidence that the amounts have been paid prior to reinstatement.

(2) If the trustor, mortgagor, or other person authorized to cure the default pursuant to this subdivision does cure the default, the beneficiary or mortgagee or the agent for the beneficiary or mortgagee shall, within 21 days following the reinstatement, execute and deliver to the trustee a notice of rescission which rescinds the declaration of default and demand for sale and advises the trustee of the date of reinstatement. The trustee shall cause the notice of

rescission to be recorded within 30 days of receipt of the notice of rescission and of all allowable fees and costs.

No charge, except for the recording fee, shall be made against the trustor or mortgagor for the execution and recordation of the notice which rescinds the declaration of default and demand for sale.

(b) (1) The notice, of any default described in this section, recorded pursuant to Section 2924, and mailed to any person pursuant to Section 2924b, shall begin with the following statement, printed or typed thereon:

"IMPORTANT NOTICE [14-point boldface type if printed or in capital letters if typed]

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, [14-point boldface type if printed or in capital letters if typed] and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is _____ as of _____
(Date)

and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things,

1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

_____

(Name of beneficiary or mortgagee)

_____

(Mailing address)

_____

(Telephone)

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. [14-point boldface type if printed or in capital letters if typed]"

Unless otherwise specified, the notice, if printed, shall appear in at least 12-point boldface type.

If the obligation secured by the deed of trust or mortgage is a contract or agreement described in paragraph (1) or (4) of subdivision (a) of Section 1632, the notice required herein shall be in Spanish if the trustor requested a Spanish language translation of the contract or agreement pursuant to Section 1632. If the obligation secured by the deed of trust or mortgage is contained in a home improvement contract, as defined in Sections 7151.2 and 7159 of the Business and Professions Code, which is subject to Title 2 (commencing with Section 1801), the seller shall specify on the contract whether or not the contract was principally negotiated in Spanish and if the contract was principally negotiated in Spanish, the notice required herein shall be in Spanish. No assignee of the contract or person authorized to record the notice of default shall incur any obligation or liability for failing to mail a notice in Spanish unless

Spanish is specified in the contract or the assignee or person has actual knowledge that the secured obligation was principally negotiated in Spanish. Unless specified in writing to the contrary, a copy of the notice required by subdivision (c) of Section 2924b shall be in English.

(2) Any failure to comply with the provisions of this subdivision shall not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

(c) Costs and expenses which may be charged pursuant to Sections 2924 to 2924i, inclusive, shall be limited to the costs incurred for recording, mailing, including certified and express mail charges, publishing, and posting notices required by Sections 2924 to 2924i, inclusive, postponement pursuant to Section 2924g not to exceed fifty dollars ($50) per postponement and a fee for a trustee's sale guarantee or, in the event of judicial foreclosure, a litigation guarantee. For purposes of this subdivision, a trustee or beneficiary may purchase a trustee's sale guarantee at a rate meeting the standards contained in Sections 12401.1 and 12401.3 of the Insurance Code.

(d) Trustee's or attorney's fees which may be charged pursuant to subdivision (a), or until the notice of sale is deposited in the mail to the trustor as provided in Section 2924b, if the sale is by power of sale contained in the deed of trust or mortgage, or, otherwise at any time prior to the decree of foreclosure, are hereby authorized to be in an amount which does not exceed two hundred forty dollars ($240) with respect to any portion of the unpaid principal sum secured which is fifty thousand dollars ($50,000) or less, plus one-half of 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars ($50,000) up to and including one hundred fifty thousand dollars ($150,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars ($150,000) up to and including five hundred thousand dollars ($500,000), plus one-eighth of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars ($500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where the charge does not exceed the amounts authorized herein. For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded.

(e) Reinstatement of a monetary default under the terms of an obligation secured by a deed of trust, or mortgage may be made at any time within the period commencing with the date of recordation of the notice of default until five business days prior to the date of sale set forth in the initial recorded notice of sale.

In the event the sale does not take place on the date set forth in the initial recorded notice of sale or a subsequent recorded notice of sale is required to be given, the right of reinstatement shall be revived as of the date of recordation of the subsequent notice of sale, and shall

continue from that date until five business days prior to the date of sale set forth in the subsequently recorded notice of sale.

In the event the date of sale is postponed on the date of sale set forth in either an initial or any subsequent notice of sale, or is postponed on the date declared for sale at an immediately preceding postponement of sale, and, the postponement is for a period which exceeds five business days from the date set forth in the notice of sale, or declared at the time of postponement, then the right of reinstatement is revived as of the date of postponement and shall continue from that date until five business days prior to the date of sale declared at the time of the postponement.

Nothing contained herein shall give rise to a right of reinstatement during the period of five business days prior to the date of sale, whether the date of sale is noticed in a notice of sale or declared at a postponement of sale.

Pursuant to the terms of this subdivision, no beneficiary, trustee, mortgagee, or their agents or successors shall be liable in any manner to a trustor, mortgagor, their agents or successors or any beneficiary under a subordinate deed of trust or mortgage or any other person having a subordinate lien or encumbrance of record thereon for the failure to allow a reinstatement of the obligation secured by a deed of trust or mortgage during the period of five business days prior to the sale of the security property, and no such right of reinstatement during this period is created by this section. Any right of reinstatement created by this section is terminated five business days prior to the date of sale set forth in the initial date of sale, and is revived only as prescribed herein and only as of the date set forth herein.

As used in this subdivision, the term "business day" has the same meaning as specified in Section 9.

SEC. 10. Section 2924f of the Civil Code is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h, "property" means real property or a leasehold estate therein, and "calendar week" means Monday through Saturday, inclusive.

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks, the first publication to be at least 20 days before the date of sale, in a newspaper of general circulation published in the city in which the

property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may be, in a newspaper of general circulation published in the county in this state that (A) is contiguous to the county in which the property or some part thereof is situated and (B) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community. Additionally, the notice of sale shall conform to the minimum requirements of Section 6043 of the Government Code and be recorded with the county recorder of the county in which the property or some part thereof is situated at least 14 days prior to the date of sale. The notice of sale shall contain the name, street address in this state, which may reflect an agent of the trustee, and either a toll-free telephone number or telephone number in this state of the trustee, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any, and a county assessor's parcel number; but if the property has no street address or other common designation, the notice shall contain a legal description of the property, the name and address of the beneficiary at whose request the sale is to be conducted, and a statement that directions may be obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description or a county assessor's parcel number and either a street address or another common designation of the property is given, the validity of the notice and the validity of the sale shall not be affected by the fact

that the street address, other common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary, or directions obtained therefrom are omitted. The term "newspaper of general circulation," as used in this section, has the same meaning as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount, including any amount provided in good faith by or on behalf of the beneficiary. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(2) If the sale of the property is to be a unified sale as provided in subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9110 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (ii) of paragraph (a) of subdivision (4) of Section 9501 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

_____,

(Deed of trust or mortgage)

DATED _____. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to a date certain and prior to which the property may be conveyed by the trustor to the person making the offer according to its terms. The offer is revocable until accepted. The performance of the offer, following acceptance, according to its terms, by a conveyance of the property to the offeror, shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

(5) In addition to the trustee fee pursuant to Section 2924c, the trustee or mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall be entitled to charge an additional fee of fifty dollars ($50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

SEC. 11. Section 2924j of the Civil Code is amended to read:

2924j. (a) Unless an interpleader action has been filed, within 30 days of the execution of the trustee's deed resulting from a sale in which there are proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k, the trustee shall send written notice to all persons with recorded interests in the real property as of the date immediately prior to the trustee's sale who would be entitled to notice pursuant to subdivisions (b) and (c) of Section 2924b. The notice shall be sent by first-class mail in the manner provided in paragraph (1) of subdivision (c) of Section 2924b and inform each entitled person of each of the following:

(1) That there has been a trustee's sale of the described real property.

(2) That the noticed person may have a claim to all or a portion of the sale proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k.

(3) The noticed person may contact the trustee at the address provided in the notice to pursue any potential claim.

(4) That before the trustee can act, the noticed person may be required to present proof that the person holds the beneficial interest in the obligation and the security interest therefor. In the case of a promissory note secured by a deed of trust, proof that the person holds the beneficial interest may include the original promissory note and assignment of beneficial interests related thereto. The noticed person shall also submit a written claim to the trustee, executed under penalty of perjury, stating the following:

(A) The amount of the claim to the date of trustee's sale.

(B) An itemized statement of the principal, interest, and other charges.

(C) That claims must be received by the trustee at the address stated in the notice no later than 30 days after the date the trustee sends notice to the potential claimant.

(b) The trustee shall exercise due diligence to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds from those persons to whom notice was sent pursuant to subdivision (a). In the event there is no dispute as to the priority of the written claims submitted to the trustee, proceeds shall be paid within 30 days after the conclusion of the notice period. If the trustee has failed to determine the priority of written claims within 90 days following the 30-day notice period, then within 10 days thereafter the trustee shall deposit the funds with the clerk of the court pursuant to subdivision (c) or file an interpleader action pursuant to subdivision (e). Nothing in this section shall preclude any person from pursuing other remedies or claims as to surplus proceeds.

(c) If, after due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's

sale surplus of multiple persons or if the trustee determines there is a conflict between potential claimants, the trustee may file a declaration of the unresolved claims and deposit with the clerk of the superior or municipal court, as applicable, of the county in which the sale occurred, that portion of the sales proceeds that cannot be distributed, less any fees charged by the clerk pursuant to this subdivision. The declaration shall specify the date of the trustee's sale, a description of the property, the names and addresses of all persons sent notice pursuant to subdivision (a), a statement that the trustee exercised due diligence pursuant to subdivision (b), that the trustee provided written notice as required by subdivisions (a) and (d) and the amount of the sales proceeds deposited by the trustee with the superior or municipal court. Further, the trustee shall submit a copy of the trustee's sales guarantee and any information relevant to the identity, location, and priority of the potential claimants with the superior or municipal court and shall file proof of service of the notice required by subdivision (d) on all persons described in subdivision (a).

The clerk shall deposit the amount with the county treasurer subject to order of the superior or municipal court upon the application of any interested party. The clerk may charge a reasonable fee for the performance of activities pursuant to this subdivision equal to the fee for filing an interpleader action pursuant to Article 2 (commencing with Section 26820) of Division 2 of Title 3 of the Government Code. Upon deposit of that portion of the sale proceeds that cannot be distributed by due diligence, the trustee shall be discharged of further responsibility for the disbursement of sale proceeds. A deposit with the clerk of the superior or municipal court pursuant to this subdivision may be either for the total proceeds of the trustee's sale, less any fees charged by the clerk, if a conflict or conflicts exist with respect to the total proceeds, or that portion that cannot be distributed after due diligence, less any fees charged by the clerk.

(d) Before the trustee deposits the funds with the clerk of the court pursuant to subdivision (c), the trustee shall send written notice by first-class mail, postage prepaid, to all persons described in subdivision (a) informing them that the trustee intends to deposit the funds with the clerk of the superior or municipal court, as applicable, and that a claim for the funds must be filed with the court within 30 days from the date of the notice, providing the address of the court in which the funds were deposited, and a phone number for obtaining further information.

Within 90 days after deposit with the clerk, the court shall consider all claims filed at least 15 days before the date on which the hearing is scheduled by the court, the clerk shall serve written notice of the hearing by first-class mail on all claimants identified in the trustees' declaration at the addresses specified therein. The court shall

distribute the deposited funds to any and all claimants entitled thereto.

(e) Nothing in this section restricts the ability of a trustee to file an interpleader action in order to resolve a dispute about the proceeds of a trustee's sale. Once an interpleader action has been filed, thereafter the provisions of this section shall not apply.

(f) "Due diligence," for the purposes of this section means that the trustee researched the written claims submitted or other evidence of conflicts and determined that a conflict of priorities exists between two or more claimants which the trustee is unable to resolve.

(g) To the extent required by the Unclaimed Property Law, a trustee in possession of surplus proceeds not required to be deposited with the court pursuant to subdivision (b) shall comply with the Unclaimed Property Law (Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure).

(h) Prior to July 1, 2000, the Judicial Council shall adopt a form to accomplish the filing authorized by this section.

SEC. 12. Section 2924k of the Civil Code is amended to read:

2924k. (a) The trustee, or the clerk of the court upon order to the clerk pursuant to subdivision (d) of Section 2924j, shall distribute the proceeds, or a portion of the proceeds, as the case may be, of the trustee's sale conducted pursuant to Section 2924h in the following order of priority:

(1) To the costs and expenses of exercising the power of sale and of sale, including the payment of the trustee's fees and attorney's fees permitted pursuant to subdivision (b) of Section 2924d and subdivision (b) of this section.

(2) To the payment of the obligations secured by the deed of trust or mortgage which is the subject of the trustee's sale.

(3) To satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority.

(4) To the trustor or the trustor's successor in interest. In the event the property is sold or transferred to another, to the vested owner of record at the time of the trustee's sale.

(b) A trustee may charge costs and expenses incurred for such items as mailing and a reasonable fee for services rendered in connection with the distribution of the proceeds from a trustee's sale, including, but not limited to, the investigation of priority and validity of claims and the disbursement of funds. If the fee charged for services rendered pursuant to this subdivision does not exceed one hundred dollars ($100), or one hundred twenty-five dollars ($125) where there are obligations specified in paragraph (3) of subdivision (a), the fee is conclusively presumed to be reasonable.

SEC. 13. Section 2924*l* of the Civil Code is amended to read:

2924*l*. (a) In the event that a trustee under a deed of trust is named in an action or proceeding in which that deed of trust is the subject, and in the event that the trustee maintains a reasonable belief that it has been named in the action or proceeding solely in its

capacity as trustee, and not arising out of any wrongful acts or omissions on its part in the performance of its duties as trustee, then, at any time, the trustee may file a declaration of nonmonetary status. The declaration shall be served on the parties in the manner set forth in Chapter 5 (commencing with Section 1010) of Title 14 of the Code of Civil Procedure.

(b) The declaration of nonmonetary status shall set forth the status of the trustee as trustee under the deed of trust that is the subject of the action or proceeding, that the trustee knows or maintains a reasonable belief that it has been named as a defendant in the proceeding solely in its capacity as a trustee under the deed of trust, its reasonable belief that it has not been named as a defendant due to any acts or omissions on its part in the performance of its duties as trustee, the basis for that knowledge or reasonable belief, and that it agrees to be bound by whatever order or judgment is issued by the court regarding the subject deed of trust.

(c) The parties who have appeared in the action or proceeding shall have 15 days from the service of the declaration by the trustee in which to object to the nonmonetary judgment status of the trustee. Any objection shall set forth the factual basis on which the objection is based and shall be served on the trustee.

(d) In the event that no objection is served within the 15-day objection period, then the trustee shall not be required to participate any further in the action or proceeding, shall not be subject to any monetary awards as and for damages, attorneys fees or costs, shall be required to respond to any discovery requests as a nonparty, and shall be bound by any court order relating to the subject deed of trust that is the subject of the action or proceeding.

(e) In the event of a timely objection to the declaration of nonmonetary status, the trustee shall thereafter be required to participate in the action or proceeding.

Additionally, in the event that the parties elect not to, or fail to, timely object to the declaration of nonmonetary status, but later through discovery, or otherwise, determine that the trustee should participate in the action because of the performance of its duties as a trustee, the parties may file and serve on all parties and the trustee a motion pursuant to Section 473 of the Code of Civil Procedure that specifies the factual basis for the demand. Upon the court's granting of the motion, the trustee shall thereafter be required to participate in the action or proceeding.

(f) Upon the filing of the declaration of nonmonetary status, the time within which the trustee is required to file an answer or other responsive pleading shall be tolled for the period of time within which the opposing parties may respond to the declaration. Upon the timely service of an objection to the declaration on nonmonetary status, the trustee shall have 30 days from the date of service within which to file an answer or other responsive pleading to the complaint or cross-complaint.

(g) For purposes of this section, "trustee" includes any agent or employee of the trustee who performs some or all of the duties of a trustee under this article.

SEC. 14. Section 2934a of the Civil Code, as added by Section 2.5 of Chapter 754 of the Statutes of 1993, is amended to read:

2934a. (a) (1) The trustee under a trust deed upon real property or an estate for years therein given to secure an obligation to pay money and conferring no other duties upon the trustee than those which are incidental to the exercise of the power of sale therein conferred, may be substituted by the recording in the county in which the property is located of a substitution executed and acknowledged by: (A) all of the beneficiaries under the trust deed, or their successors in interest, and the substitution shall be effective notwithstanding any contrary provision in any trust deed executed on or after January 1, 1968; or (B) the holders of more than 50 percent of the record beneficial interest of a series of notes secured by the same real property or of undivided interests in a note secured by real property equivalent to a series transaction, exclusive of any notes or interests of a licensed real estate broker that is the issuer or servicer of the notes or interests or of any affiliate of that licensed real estate broker.

(2) A substitution executed pursuant to subparagraph (B) of paragraph (1) is not effective unless all the parties signing the substitution sign, under penalty of perjury, a separate written document stating the following:

(A) The substitution has been signed pursuant to subparagraph (B) of paragraph (1).

(B) None of the undersigned is a licensed real estate broker or an affiliate of the broker that is the issuer or servicer of the obligation secured by the deed of trust.

(C) The undersigned together hold more than 50 percent of the record beneficial interest of a series of notes secured by the same real property or of undivided interests in a note secured by real property equivalent to a series transaction.

(D) Notice of the substitution was sent by certified mail, postage prepaid, with return receipt requested to each holder of an interest in the obligation secured by the deed of trust who has not joined in the execution of the substitution or the separate document.

The separate document shall be attached to the substitution and be recorded in the office of the county recorder of each county in which the real property described in the deed of trust is located. Once the document required by this paragraph is recorded, it shall constitute conclusive evidence of compliance with the requirements of this paragraph in favor of substituted trustees acting pursuant to this section, subsequent assignees of the obligation secured by the deed of trust and subsequent bona fide purchasers or encumbrancers for value of the real property described therein.

(3) For purposes of this section, "affiliate of the licensed real estate broker" includes any person as defined in Section 25013 of the Corporations Code that is controlled by, or is under common control with, or who controls, a licensed real estate broker. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of management and policies.

(4) The substitution shall contain the date of recordation of the trust deed, the name of the trustor, the book and page or instrument number where the trust deed is recorded, and the name of the new trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority, and title granted and delegated to the trustee named in the deed of trust. A substitution may be accomplished, with respect to multiple deeds of trust which are recorded in the same county in which the substitution is being recorded and which all have the same trustee and beneficiary or beneficiaries, by recording a single document, complying with the requirements of this section, substituting trustees for all those deeds of trust.

(b) If the substitution is effected after a notice of default has been recorded but prior to the recording of the notice of sale, the beneficiary or beneficiaries or their authorized agents shall cause a copy of the substitution to be mailed, prior to the recording thereof, in the manner provided in Section 2924b, to the trustee then of record and to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b. An affidavit shall be attached to the substitution that notice has been given to those persons and in the manner required by this subdivision.

(c) Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f, any sale conducted by the substituted trustee shall be void.

(d) This section shall become operative on January 1, 1998.

CHAPTER 975

An act to amend Sections 11055, 11100, and 11377 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 11055 of the Health and Safety Code is amended to read:

11055. (a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium, opiate, and any salt, compound, derivative, or preparation of opium or opiate, with the exception of naloxone hydrochloride (N-allyl-14-hydroxy-nordihydromorphinone hydrochloride), but including the following:

(A) Raw opium.
(B) Opium extracts.
(C) Opium fluid extracts.
(D) Powdered opium.
(E) Granulated opium.
(F) Tincture of opium.
(G) Apomorphine.
(H) Codeine.
(I) Ethylmorphine.
(J) Hydrocodone.
(K) Hydromorphone.
(L) Metopon.
(M) Morphine.
(N) Oxycodone.
(O) Oxymorphone.
(P) Thebaine.

(2) Any salt, compound, isomer, or derivative, whether natural or synthetic, of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy).

(6) Cocaine, except as specified in Section 11054.

(7) Ecgonine, whether natural or synthetic, or any salt, isomer, derivative, or preparation thereof.

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(1) Alfentanyl.
(2) Alphaprodine.

(3) Anileridine.
(4) Bezitramide.
(5) Bulk dextropropoxyphene (nondosage forms).
(6) Dihydrocodeine.
(7) Diphenoxylate.
(8) Fentanyl.
(9) Isomethadone.
(10) Levoalphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM. This substance is authorized for the treatment of narcotic addicts under federal law (see Part 291 (commencing with Section 291.501) and Part 1308 (commencing with Section 1308.01) of Title 21 of the Code of Federal Regulations).
(11) Levomethorphan.
(12) Levorphanol.
(13) Metazocine.
(14) Methadone.
(15) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
(16) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
(17) Pethidine (meperidine).
(18) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
(19) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
(20) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
(21) Phenazocine.
(22) Piminodine.
(23) Racemethorphan.
(24) Racemorphan.
(25) Sufentanyl.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
(2) Methamphetamine, its salts, isomers, and salts of its isomers.
(3) Dimethylamphetamine (N,N-dimethylamphetamine), its salts, isomers, and salts of its isomers.
(4) N-Ethylmethamphetamine (N-ethyl, N-methylamphetamine), its salts, isomers, and salts of its isomers.
(5) Phenmetrazine and its salts.
(6) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation

which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital.

(2) Pentobarbital.

(3) Phencyclidines, including the following:

(A) 1-(1-phenylcyclohexyl) piperidine (PCP).

(B) 1-(1-phenylcyclohexyl) morpholine (PCM).

(C) Any analog of phencyclidine which is added by the Attorney General by regulation pursuant to this paragraph.

The Attorney General, or his or her designee, may, by rule or regulation, add additional analogs of phencyclidine to those enumerated in this paragraph after notice, posting, and hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Attorney General shall, in the calendar year of the regular session of the Legislature in which the rule or regulation is adopted, submit a draft of a proposed bill to each house of the Legislature which would incorporate the analogs into this code. No rule or regulation shall remain in effect beyond January 1 after the calendar year of the regular session in which the draft of the proposed bill is submitted to each house. However, if the draft of the proposed bill is submitted during a recess of the Legislature exceeding 45 calendar days, the rule or regulation shall be effective until January 1 after the next calendar year.

(4) Secobarbital.

(5) Glutethimide.

(6) Gamma-hydroxybutyrate, including its immediate precursors, isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, including, but not limited to, gamma-butyrolactone.

(f) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(A) Phenylacetone. Some trade or other names: phenyl-2 propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine.

(B) 1-piperidinocyclohexane carbonitrile (PCC).

(g) Hallucinogenic substances. Any of the following hallucinogenic substances: dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration.

SEC. 1.5. Section 11055 of the Health and Safety Code is amended to read:

11055. (a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium, opiate, and any salt, compound, derivative, or preparation of opium or opiate, with the exception of naloxone hydrochloride (N-allyl-14-hydroxy-nordihydromorphinone hydrochloride), but including the following:

(A) Raw opium.
(B) Opium extracts.
(C) Opium fluid extracts.
(D) Powdered opium.
(E) Granulated opium.
(F) Tincture of opium.
(G) Apomorphine.
(H) Codeine.
(I) Ethylmorphine.
(J) Hydrocodone.
(K) Hydromorphone.
(L) Metopon.
(M) Morphine.
(N) Oxycodone.
(O) Oxymorphone.
(P) Thebaine.

(2) Any salt, compound, isomer, or derivative, whether natural or synthetic, of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy).

(6) Cocaine, except as specified in Section 11054.

(7) Ecgonine, whether natural or synthetic, or any salt, isomer, derivative, or preparation thereof.

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(1) Alfentanyl.
(2) Alphaprodine.

(3) Anileridine.
(4) Bezitramide.
(5) Bulk dextropropoxyphene (nondosage forms).
(6) Dihydrocodeine.
(7) Diphenoxylate.
(8) Fentanyl.
(9) Isomethadone.
(10) Levoalphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM. This substance is authorized for the treatment of narcotic addicts under federal law (see Part 291 (commencing with Section 291.501) and Part 1308 (commencing with Section 1308.01) of Title 21 of the Code of Federal Regulations).
(11) Levomethorphan.
(12) Levorphanol.
(13) Metazocine.
(14) Methadone.
(15) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
(16) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
(17) Pethidine (meperidine).
(18) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
(19) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
(20) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
(21) Phenazocine.
(22) Piminodine.
(23) Racemethorphan.
(24) Racemorphan.
(25) Sufentanyl.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.
(2) Methamphetamine, its salts, isomers, and salts of its isomers.
(3) Dimethylamphetamine (N,N-dimethylamphetamine), its salts, isomers, and salts of its isomers.
(4) N-Ethylmethamphetamine (N-ethyl, N-methylamphetamine), its salts, isomers, and salts of its isomers.
(5) Phenmetrazine and its salts.
(6) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation

which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital.

(2) Pentobarbital.

(3) Phencyclidines, including the following:

(A) 1-(1-phenylcyclohexyl) piperidine (PCP).

(B) 1-(1-phenylcyclohexyl) morpholine (PCM).

(C) Any analog of phencyclidine which is added by the Attorney General by regulation pursuant to this paragraph.

The Attorney General, or his or her designee, may, by rule or regulation, add additional analogs of phencyclidine to those enumerated in this paragraph after notice, posting, and hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Attorney General shall, in the calendar year of the regular session of the Legislature in which the rule or regulation is adopted, submit a draft of a proposed bill to each house of the Legislature which would incorporate the analogs into this code. No rule or regulation shall remain in effect beyond January 1 after the calendar year of the regular session in which the draft of the proposed bill is submitted to each house. However, if the draft of the proposed bill is submitted during a recess of the Legislature exceeding 45 calendar days, the rule or regulation shall be effective until January 1 after the next calendar year.

(4) Secobarbital.

(5) Glutethimide.

(6) Gamma-hydroxybutyrate, including its immediate precursors, isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, including, but not limited to, gamma-butyrolactone.

(f) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

Phenylacetone. Some trade or other names: phenyl-2 propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine.

(B) 1-piperidinocyclohexane carbonitrile (PCC).

SEC. 2. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise furnishes any of the following substances to any person or business entity in this state

or any other state shall submit a report to the Department of Justice of all of those transactions:

(1) Phenyl-2-propanone.
(2) Methylamine.
(3) Ethylamine.
(4) D-lysergic acid.
(5) Ergotamine tartrate.
(6) Diethyl malonate.
(7) Malonic acid.
(8) Ethyl malonate.
(9) Barbituric acid.
(10) Piperidine.
(11) N-acetylanthranilic acid.
(12) Pyrrolidine.
(13) Phenylacetic acid.
(14) Anthranilic acid.
(15) Morpholine.
(16) Ephedrine.
(17) Pseudoephedrine.
(18) Norpseudoephedrine.
(19) Phenylpropanolamine.
(20) Propionic anhydride.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionylchloride.
(25) Benzyl cyanide.
(26) Ergonovine maleate.
(27) N-methylephedrine.
(28) N-ethylephedrine.
(29) N-methylpseudoephedrine.
(30) N-ethylpseudoephedrine.
(31) Chloroephedrine.
(32) Chloropseudoephedrine.
(33) Hydriodic acid.
(34) Gamma-butyrolactone.
(35) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c) (1) Any manufacturer, wholesaler, retailer, or other person in this state, prior to selling, transferring, or otherwise furnishing any

substance specified in subdivision (a) to any person or business entity in this state or any other state, shall require (A) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (B) proper identification from the purchaser. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(2) For the purposes of this subdivision, "proper identification" for in-state or out-of-state purchasers includes a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser, or individual representing the purchasing business entity, which contains a photograph of the purchaser or purchasing individual, and includes the current domicile or mailing address of the purchaser or purchasing individual, other than a post office box number. "Proper identification" also includes the motor vehicle license number of the motor vehicle used by the purchaser or purchasing individual at the time of transfer or the name of the common carrier and the name and valid motor vehicle operator license number of the driver of the common carrier, and the signature of the purchaser, purchasing individual, or driver of the common carrier. The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature as a witness to the signature and identification of the purchaser, purchasing individual, or driver of the common carrier.

(d) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. However, the Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that the following exist:

(1) A pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances.

(2) The recipient has established a record of utilization of the substance or substances for lawful purposes.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer licensed by the State Department of Health Services or wholesaler licensed by the California State Board of Pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, veterinarian, or retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) (A) Except as otherwise provided in subparagraphs (B) and (C), this section shall not apply to any sale, transfer, furnishing, or receipt of any drug which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder.

(B) This section shall apply to preparations in solid dosage form containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine as the only active medicinal ingredient.

(C) This section shall not apply to the sale of ordinary over-the-counter ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products by retail distributors as defined by this article. However, in no instance shall the sale of any product not defined as ordinary over-the-counter ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine by retail distributors be greater than 24 grams of ephedrine, 24 grams of pseudoephedrine, 24 grams of norpseudoephedrine, or 24 grams of phenylpropanolamine in a single transaction.

(D) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement.

(5) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the

state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both the fine and imprisonment.

(g) (1) It is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) It is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) A violation of this subdivision is a misdemeanor.

(h) For the purposes of this article, the following terms have the following meanings:

(1) "Drug store" is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) "General merchandise store" is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) "Grocery store" is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) "Ordinary over-the-counter ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product" means a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine that is required to be reported pursuant to this article and that is, if not a liquid, either sold in package sizes of not more than 3.0 grams of ephedrine base, 3.0 grams of pseudoephedrine base, 3.0 grams of norpseudoephedrine base, or 3.0 grams of phenylpropanolamine base, and is packaged in blister packs, each blister containing not more than two dosage units, or where the use of blister packs is technically infeasible, is packaged in unit dose packets or pouches; or, if a liquid, sold in package sizes of not more than 3.0 grams of ephedrine base, 3.0 grams of pseudoephedrine base, 3.0 grams of norpseudoephedrine base, or 3.0 grams of phenylpropanolamine base.

(5) "Retail distributor" means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. "Retail distributor" includes an entity that makes a direct sale, but does not include the parent company of such an entity if the company is not involved in direct sales regulated by this article.

(6) "Sale for personal use" means the sale in a single transaction to an individual customer for a legitimate medical use of a product

containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in subparagraph (C) of paragraph (4) of subdivision (e). "Sale for personal use" also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

SEC. 2.5. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise furnishes any of the following substances to any person or business entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:

(1) Phenyl-2-propanone.
(2) Methylamine.
(3) Ethylamine.
(4) D-lysergic acid.
(5) Ergotamine tartrate.
(6) Diethyl malonate.
(7) Malonic acid.
(8) Ethyl malonate.
(9) Barbituric acid.
(10) Piperidine.
(11) N-acetylanthranilic acid.
(12) Pyrrolidine.
(13) Phenylacetic acid.
(14) Anthranilic acid.
(15) Morpholine.
(16) Ephedrine.
(17) Pseudoephedrine.
(18) Norpseudoephedrine.
(19) Phenylpropanolamine.
(20) Propionic anhydride.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionylchloride.
(25) Benzyl cyanide.
(26) Ergonovine maleate.
(27) N-methylephedrine.
(28) N-ethylephedrine.
(29) N-methylpseudoephedrine.
(30) N-ethylpseudoephedrine.
(31) Chloroephedrine.
(32) Chloropseudoephedrine.
(33) Hydriodic acid.
(34) Gamma-butyrolactone.
(35) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c) (1) Any manufacturer, wholesaler, retailer, or other person in this state, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to any person or business entity in this state or any other state, shall require (A) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (B) proper identification from the purchaser. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(2) For the purposes of this subdivision, "proper identification" for in-state or out-of-state purchasers includes a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser, or individual representing the purchasing business entity, which contains a photograph of the purchaser or purchasing individual, and includes the current domicile or mailing address of the purchaser or purchasing individual, other than a post office box number. "Proper identification" also includes the motor vehicle license number of the motor vehicle used by the purchaser or purchasing individual at the time of transfer or the name of the common carrier and the name and valid motor vehicle operator license number of the driver of the common carrier, and the signature of the purchaser, purchasing individual, or driver of the common carrier. The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature as a witness to the signature and identification of the purchaser, purchasing individual, or driver of the common carrier.

(d) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. However, the Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and

the recipient involving the substance or substances if the Department of Justice determines that the following exist:

(1) A pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances.

(2) The recipient has established a record of utilization of the substance or substances for lawful purposes.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer licensed by the State Department of Health Services or wholesaler licensed by the California State Board of Pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, veterinarian, or retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) (A) Any sale, transfer, furnishing, or receipt of any drug which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder. However, this section shall apply to preparations in solid or liquid dosage form, except pediatric liquid forms, as defined, containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine where the individual transaction involves more than three packages or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement, unless otherwise reinstated pursuant to subdivision (d) or (e) of Section 814 of Title 21 of the United States Code as an exempt product.

(5) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both the fine and imprisonment.

(g) (1) Except as otherwise provided in subparagraph (A) of paragraph (4) of subdivision (e), it is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) Except as otherwise provided in subparagraph (A) of paragraph (4) of subdivision (e), it is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, or (ii) knowingly sell more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, other than pediatric liquids as defined. Except as otherwise provided in this section, the three package per transaction limitation or nine gram per transaction limitation imposed by this paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.

(4) A violation of this subdivision is a misdemeanor.

(h) For the purposes of this article, the following terms have the following meanings:

(1) "Drug store" is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) "General merchandise store" is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) "Grocery store" is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) "Pediatric liquid" means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of phenylpropanolamine or pseudoephedrine per five milliliters of liquid product, except for liquid products primarily

intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.

(5) "Retail distributor" means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. "Retail distributor" includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

(6) "Sale for personal use" means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in paragraph (3) of subdivision (g). "Sale for personal use" also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

(i) It is the intent of the Legislature that this section shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

SEC. 3. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (4) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison.

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of such a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 11055 of the Health and Safety Code proposed by both this bill and SB 550. 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 11055 of the Health & Safety Code, and (3) this bill is enacted after SB 550, in which case Section 11055 of the Health and Safety Code as amended by SB 550, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 11100 of the Health and Safety Code proposed by both this bill and AB 162. 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 11100 of the Health and Safety Code, and (3) this bill is enacted after AB 162, 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 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 976

An act to add Section 12001.1 to the Penal Code, relating to undetectable knives.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 12001.1 is added to the Penal Code, to read:

12001.1. (a) Any person in this state who commercially manufactures or causes to be commercially manufactured, or who knowingly imports into the state for commercial sale, keeps for

commercial sale, or offers or exposes for commercial sale, any undetectable knife is guilty of a misdemeanor. As used in this section, an "undetectable knife" means any 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 that is commercially manufactured to be used as a weapon and is not detectable by a metal detector set at standard calibration.

(b) Notwithstanding any other provision of law, commencing January 1, 2000, all knives 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 that are commercially manufactured in this state that utilize materials that are not detectable by a metal detector shall be manufactured to include materials that will ensure they are detectable by a metal detector set at standard calibration.

(c) This section shall not apply to the manufacture or importation of undetectable knives for sale to a law enforcement or military entity nor shall this section apply to the subsequent sale of these knives to a law enforcement or military entity.

(d) This section shall not apply to the manufacture or importation of undetectable knives for sale to federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that the undetectable knives are properly housed and secured from unauthorized handling, nor shall this section apply to the subsequent sale of the knives to these societies, museums, and collections.

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 977

An act to amend Section 2499.5 of the Business and Professions Code, and to amend Section 139 of the Labor Code, relating to medical regulation, and making an appropriation therefor.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 2499.5 of the Business and Professions Code is amended to read:

2499.5. The following fees apply to certificates to practice podiatric medicine. The amount of fees prescribed for doctors of podiatric medicine shall be those set forth in this section unless a lower fee is established by the board in accordance with Section 2499.6. Fees collected pursuant to this section shall be fixed by the board in amounts not to exceed the actual costs of providing the service for which the fee is collected.

(a) Each applicant for a certificate to practice podiatric medicine shall pay an application fee of twenty dollars ($20) at the time the application is filed. If the applicant qualifies for a certificate, he or she shall pay a fee which shall be fixed by the board at an amount not to exceed one hundred dollars ($100) nor less than five dollars ($5) for the issuance of the certificate.

(b) The oral examination fee shall be seven hundred dollars ($700), or the actual cost, whichever is lower, and shall be paid by each applicant. If the applicant's credentials are insufficient or if the applicant does not desire to take the examination, and has so notified the board 30 days prior to the examination date, only the examination fee is returnable to the applicant. The board may charge an examination fee for any subsequent reexamination of the applicant.

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required by this section, shall pay an initial license fee. The initial license fee shall be eight hundred dollars ($800). The initial license shall expire the second year after its issuance on the last day of the month of birth of the licensee. The board may reduce the initial license fee by up to 50 percent of the amount of the fee for any applicant who is enrolled in a postgraduate training program approved by the board or who has completed a postgraduate training program approved by the board within six months prior to the payment of the initial license fee.

(d) The biennial renewal fee shall be nine hundred dollars ($900). This fee shall remain in effect only until January 1, 2002, and as of that date is reduced to eight hundred dollars ($800), unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date. Any licensee enrolled in an approved residency program shall be required to pay only 50 percent of the biennial renewal fee at the time of his or her first renewal.

(e) The delinquency fee is one hundred fifty dollars ($150).

(f) The duplicate wall certificate fee is forty dollars ($40).

(g) The duplicate renewal receipt fee is forty dollars ($40).

(h) The endorsement fee is thirty dollars ($30).

(i) The letter of good standing fee or for loan deferment is thirty dollars ($30).

(j) There shall be a fee of sixty dollars ($60) for the issuance of a limited license under Section 2475.

(k) The application fee for certification under Section 2473 shall be fifty dollars ($50). The examination and reexamination fee for this certification shall be seven hundred dollars ($700).

(*l*) The filing fee to appeal the failure of an oral examination shall be twenty-five dollars ($25).

(m) The fee for approval of a continuing education course or program shall be one hundred dollars ($100).

SEC. 2. Section 139 of the Labor Code is amended to read:

139. (a) The Industrial Medical Council shall consist of 11 doctors of medicine, at least one of whom shall be a psychiatrist and at least one of whom shall specialize in occupational medicine, two doctors of osteopathic medicine, two doctors of chiropractic, one physical therapist, one doctor of psychology, one doctor of podiatric medicine, and one acupuncturist, all of whom shall be licensed to practice in this state, and one medical economist. The administrative director shall be an ex officio, nonvoting member of the council, and the medical director appointed pursuant to Section 122 shall serve as executive secretary of the council.

(b) The Governor shall appoint six doctors of medicine, two doctors of osteopathic medicine, one doctor of chiropractic, and one medical economist to the council. The Senate Committee on Rules shall appoint three doctors of medicine, one of whom shall be a psychiatrist, one doctor of chiropractic, and the acupuncturist. The Speaker of the Assembly shall appoint two doctors of medicine, one of whom shall be an occupational medicine specialist, the physical therapist, the doctor of psychology, and the doctor of podiatric medicine.

The term of office of members of the council shall be four years, and a member shall hold office until the appointment of a successor. However, the initial terms of three of the doctors of medicine appointed by the Governor shall expire, respectively, on December 31, 1991, December 31, 1992, and December 31, 1993, and the initial terms of the doctors of medicine appointed by the Speaker of the Assembly shall expire, respectively, on December 31, 1991, December 31, 1992, and December 31, 1993. The initial term of one doctor of osteopathic medicine and the doctor of psychology shall both expire on December 31, 1991. Any vacancy shall be filled by the original appointing authority for the unexpired term.

(c) The 11 doctors of medicine and the doctors of osteopathic medicine of the council shall represent medical specialties concerned with the treatment of industrial injury and disease. The doctors of medicine shall be appointed after consultation with the statewide and local associations of the medical profession. The doctors of osteopathic medicine, psychology, and podiatric medicine shall be appointed after consultation with the statewide associations of the osteopathic medical profession, psychologists, and podiatric

medicine. The doctors of chiropractic shall be appointed after consultation with statewide and local associations of the chiropractic profession.

(d) Any physician of a type which must be represented pursuant to subdivision (a) may be considered for appointment to the council if the following qualifications are met:

(1) A physician and surgeon shall be board certified in his or her specialty or, if a doctor of chiropractic, shall be certified in a chiropractic specialty recognized and approved by the California Chiropractic Association, the International Chiropractors Association of California, or the American Chiropractic Association, or if a psychologist, shall be board certified in clinical psychology, or hold a doctoral degree in psychology from an accredited university or professional school and have not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(2) The physician and podiatrist shall be experienced in treating and evaluating industrial injuries and shall maintain an active practice, of which at least one-third of the total practice time is devoted to direct patient treatment.

(e) Members of the council shall, within the scope of each member's professional training, do all of the following:

(1) Maintain liaisons with the medical, osteopathic, chiropractic, psychological, and podiatric professions.

(2) Counsel and assist the administrative director and perform other duties as the administrative director may request.

(3) Assist in recruiting physicians for the medical bureau of the division.

(4) Assist in developing guidelines for the determination of disputed questions of clinical fact, including guidelines for the range of time normally required to perform a comprehensive medical-legal evaluation, as well as the content of those procedures. The guidelines shall include the range of time normally required for direct patient contact between the physician and the patient in each such procedure.

(5) Suggest standards for improving care furnished to injured employees.

(6) Undertake continuing studies of developments in the field of rehabilitation, and continuously inform treating physicians of these developments.

(7) Recommend reasonable levels of fees for physicians performing services under Division 4 (commencing with Section 3200).

(8) In coordination with the administrative director, monitor and measure changes in the cost and frequency of the most common medical services, and adopt guidelines for the treatment of common industrial injuries on or before July 1, 1994. The guidelines shall reflect practices as generally accepted by the health care community,

and shall apply the current standards of care, including, but not limited to, appropriate and inappropriate diagnostic techniques, treatment modalities, adjustive modalities, length of treatment, and appropriate specialty referrals. On or before July 1, 1994, the administrative director shall adopt model utilization protocols in order to provide utilization review standards. All insurers shall comply with this protocol by July 1, 1995.

(9) In consultation with the administrative director, promulgate a form which may be used by treating physicians to report on medical issues necessary to determine an employee's compensation.

(f) The council shall appoint an advisory committee on psychiatric injuries with both psychologists and psychiatrists as members and shall consider the advisory committee's recommendations concerning psychiatric injuries. The council may appoint advisory committees for other specialties as may be necessary to the performance of its duties.

(g) No action of the council shall be taken unless concurred in by not less than nine members present and voting at a meeting.

(h) Members of the council shall receive actual, necessary traveling expenses and a per diem allowance of one hundred dollars ($100) for each day spent in meetings of the council.

CHAPTER 978

An act to amend Sections 11100 and 11106 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise furnishes any of the following substances to any person or business entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:

(1) Phenyl-2-propanone.
(2) Methylamine.
(3) Ethylamine.
(4) D-lysergic acid.
(5) Ergotamine tartrate.
(6) Diethyl malonate.
(7) Malonic acid.
(8) Ethyl malonate.

(9) Barbituric acid.
(10) Piperidine.
(11) N-acetylanthranilic acid.
(12) Pyrrolidine.
(13) Phenylacetic acid.
(14) Anthranilic acid.
(15) Morpholine.
(16) Ephedrine.
(17) Pseudoephedrine.
(18) Norpseudoephedrine.
(19) Phenylpropanolamine.
(20) Propionic anhydride.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionylchloride.
(25) Benzyl cyanide.
(26) Ergonovine maleate.
(27) N-methylephedrine.
(28) N-ethylephedrine.
(29) N-methylpseudoephedrine.
(30) N-ethylpseudoephedrine.
(31) Chloroephedrine.
(32) Chloropseudoephedrine.
(33) Hydriodic acid.
(34) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c) (1) Any manufacturer, wholesaler, retailer, or other person in this state, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to any person or business entity in this state or any other state, shall require (A) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (B) proper identification from the purchaser. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(2) For the purposes of this subdivision, "proper identification" for in-state or out-of-state purchasers includes a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser, or individual representing the purchasing business entity, which contains a photograph of the purchaser or purchasing individual, and includes the current domicile or mailing address of the purchaser or purchasing individual, other than a post office box number. "Proper identification" also includes the motor vehicle license number of the motor vehicle used by the purchaser or purchasing individual at the time of transfer or the name of the common carrier and the name and valid motor vehicle operator license number of the driver of the common carrier, and the signature of the purchaser, purchasing individual, or driver of the common carrier. The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature as a witness to the signature and identification of the purchaser, purchasing individual, or driver of the common carrier.

(d) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. However, the Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that the following exist:

(1) A pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances.

(2) The recipient has established a record of utilization of the substance or substances for lawful purposes.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer licensed by the State Department of Health Services or wholesaler licensed by the California State Board of Pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, veterinarian, or retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) (A) Any sale, transfer, furnishing, or receipt of any drug which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder. However, this section shall apply to preparations in solid or liquid dosage form, except pediatric liquid forms, as defined, containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine where the individual transaction involves more than three packages or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement, unless otherwise reinstated pursuant to subdivision (d) or (e) of Section 814 of Title 21 of the United States Code as an exempt product.

(5) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both the fine and imprisonment.

(g) (1) Except as otherwise provided in subparagraph (A) of paragraph (4) of subdivision (e), it is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) Except as otherwise provided in subparagraph (A) of paragraph (4) of subdivision (e), it is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, or (ii) knowingly sell more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, other than pediatric liquids as defined. Except as otherwise provided

in this section, the three package per transaction limitation or nine gram per transaction limitation imposed by this paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.

(4) A violation of this subdivision is a misdemeanor.

(h) For the purposes of this article, the following terms have the following meanings:

(1) "Drugstore" is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) "General merchandise store" is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) "Grocery store" is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) "Pediatric liquid" means a nonencapsulated liquid whose unit measure according to product labeling is stated in milliliters, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of phenylpropanolamine or pseudoephedrine per five milliliters of liquid product, except for liquid products primarily intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.

(5) "Retail distributor" means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. "Retail distributor" includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

(6) "Sale for personal use" means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in paragraph (3) of subdivision (g). "Sale for personal use" also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

(i) It is the intent of the Legislature that this section shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

SEC. 1.5. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise furnishes any of the following substances to any person or business entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:

(1) Phenyl-2-propanone.
(2) Methylamine.
(3) Ethylamine.
(4) D-lysergic acid.
(5) Ergotamine tartrate.
(6) Diethyl malonate.
(7) Malonic acid.
(8) Ethyl malonate.
(9) Barbituric acid.
(10) Piperidine.
(11) N-acetylanthranilic acid.
(12) Pyrrolidine.
(13) Phenylacetic acid.
(14) Anthranilic acid.
(15) Morpholine.
(16) Ephedrine.
(17) Pseudoephedrine.
(18) Norpseudoephedrine.
(19) Phenylpropanolamine.
(20) Propionic anhydride.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionylchloride.
(25) Benzyl cyanide.
(26) Ergonovine maleate.
(27) N-methylephedrine.
(28) N-ethylephedrine.
(29) N-methylpseudoephedrine.
(30) N-ethylpseudoephedrine.
(31) Chloroephedrine.
(32) Chloropseudoephedrine.
(33) Hydriodic acid.
(34) Gamma-butyrolactone.
(35) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c) (1) Any manufacturer, wholesaler, retailer, or other person in this state, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to any person or business entity in this state or any other state, shall require (A) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (B) proper identification from the purchaser. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(2) For the purposes of this subdivision, "proper identification" for in-state or out-of-state purchasers includes a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser, or individual representing the purchasing business entity, which contains a photograph of the purchaser or purchasing individual, and includes the current domicile or mailing address of the purchaser or purchasing individual, other than a post office box number. "Proper identification" also includes the motor vehicle license number of the motor vehicle used by the purchaser or purchasing individual at the time of transfer or the name of the common carrier and the name and valid motor vehicle operator license number of the driver of the common carrier, and the signature of the purchaser, purchasing individual, or driver of the common carrier. The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature as a witness to the signature and identification of the purchaser, purchasing individual, or driver of the common carrier.

(d) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. However, the Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and

the recipient involving the substance or substances if the Department of Justice determines that the following exist:

(1) A pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances.

(2) The recipient has established a record of utilization of the substance or substances for lawful purposes.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer licensed by the State Department of Health Services or wholesaler licensed by the California State Board of Pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, veterinarian, or retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) (A) Any sale, transfer, furnishing, or receipt of any drug which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder. However, this section shall apply to preparations in solid or liquid dosage form, except pediatric liquid forms, as defined, containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine where the individual transaction involves more than three packages or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement, unless otherwise reinstated pursuant to subdivision (d) or (e) of Section 814 of Title 21 of the United States Code as an exempt product.

(5) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both the fine and imprisonment.

(g) (1) Except as otherwise provided in subparagraph (A) of paragraph (4) of subdivision (e), it is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) Except as otherwise provided in subparagraph (A) of paragraph (4) of subdivision (e), it is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, or (ii) knowingly sell more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, other than pediatric liquids as defined. Except as otherwise provided in this section, the three package per transaction limitation or nine gram per transaction limitation imposed by this paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.

(4) A violation of this subdivision is a misdemeanor.

(h) For the purposes of this article, the following terms have the following meanings:

(1) "Drug store" is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) "General merchandise store" is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) "Grocery store" is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) "Pediatric liquid" means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of phenylpropanolamine or pseudoephedrine per five milliliters of liquid product, except for liquid products primarily

intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.

(5) "Retail distributor" means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. "Retail distributor" includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

(6) "Sale for personal use" means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in paragraph (3) of subdivision (g). "Sale for personal use" also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

(i) It is the intent of the Legislature that this section shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

SEC. 2. Section 11106 of the Health and Safety Code is amended to read:

11106. (a) (1) Any manufacturer, wholesaler, retailer, or any other person or business entity in this state who sells, transfers, or otherwise furnishes any substance specified in subdivision (a) of Section 11100 to a person or business entity in this state or any other state or who obtains from a source outside of the state any substance specified in subdivision (a) of Section 11100 shall submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice. An intracompany transfer does not require a permit if the transferor is a permittee. Transfers between company partners or between a company and an analytical laboratory do not require a permit if the transferor is a permittee and a report as to the nature and extent of the transfer is made to the Department of Justice pursuant to Section 11100 or 11100.1. This paragraph shall not apply to any manufacturer, wholesaler, retailer, or other person who is licensed by either the State Department of Health Services or the California State Board of Pharmacy, and is also registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(2) Except as provided in paragraph (3), no permit shall be required of any manufacturer, wholesaler, retailer, or other person for the sale, transfer, furnishing, or obtaining of any product which

contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder.

(3) A permit shall be required for the sale, transfer, furnishing, or obtaining of preparations in solid or liquid dosage form containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, unless (A) the transaction involves the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products by retail distributors as defined by this article over the counter and without a prescription, or (B) the transaction is made by a person or business entity exempted from the permitting requirements of this subdivision under paragraph (1).

(b) The department shall provide application forms, which are to be completed under penalty of perjury, in order to obtain information relating to the identity of any applicant applying for a permit, including, but not limited to, the business name of the applicant or the individual name, and if a corporate entity, the names of its board of directors, the business in which the applicant is engaged, the business address of the applicant, a full description of any substance to be sold, transferred, or otherwise furnished or to be obtained, the specific purpose for the use, sale, or transfer of those substances specified in subdivision (a) of Section 11100, the training, experience, or education relating to this use, and any additional information requested by the department relating to possible grounds for denial as set forth in this section, or by applicable regulations adopted by the department. The requirement for the specific purpose for the use, sale, or transfer of those substances specified in subdivision (a) of Section 11100 does not require an applicant or permittee to reveal their chemical processes that are typically considered trade secrets and proprietary business information.

(c) Applicants and permittees shall authorize the department, or any of its duly authorized representatives, as a condition of being permitted, to make any examination of the books and records of any applicant, permittee, or other person, or visit and inspect the business premises of any applicant or permittee during normal business hours, as deemed necessary to enforce this chapter.

(d) An application may be denied, or a permit may be revoked or suspended, for reasons which include, but are not limited to, the following:

(1) Materially falsifying an application for a permit or an application for the renewal of a permit.

(2) If any individual owner, manager, agent, representative, or employee for the applicant who has direct access, management, or control for any substance listed under subdivision (a) of Section 11100, is or has been convicted of a misdemeanor or felony relating

to any of the substances listed under subdivision (a) of Section 11100, any misdemeanor drug-related offense, or any felony under the laws of this state or the United States.

(3) Failure to maintain effective controls against the diversion of precursors to unauthorized persons or entities.

(4) Failure to comply with this article or any regulations of the department adopted thereunder.

(5) Failure to provide the department, or any duly authorized federal or state official, with access to any place for which a permit has been issued, or for which an application for a permit has been submitted, in the course of conducting a site investigation, inspection, or audit; or failure to promptly produce for the official conducting the site investigation, inspection, or audit any book, record, or document requested by the official.

(6) Failure to provide adequate documentation of a legitimate business purpose involving the applicant's or permittee's use of any substance listed in subdivision (a) of Section 11100.

(7) Commission of any act which would demonstrate actual or potential unfitness to hold a permit in light of the public safety and welfare, which act is substantially related to the qualifications, functions, or duties of a permitholder.

(8) If any individual owner, manager, agent, representative, or employee for the applicant who has direct access, management, or control for any substance listed under subdivision (a) of Section 11100, willfully violates or has been convicted of violating, any federal, state, or local criminal statute, rule, or ordinance regulating the manufacture, maintenance, disposal, sale, transfer, or furnishing of any of those substances.

(e) Notwithstanding any other provision of law, an investigation of an individual applicant's qualifications, or the qualifications of an applicant's owner, manager, agent, representative, or employee who has direct access, management, or control of any substance listed under subdivision (a) of Section 11100, for a permit may include review of his or her summary criminal history information pursuant to Sections 11105 and 13300 of the Penal Code, including, but not limited to, records of convictions, regardless of whether those convictions have been expunged pursuant to Section 1204.5 of the Penal Code, and any arrests pending adjudication.

(f) The department may retain jurisdiction of a canceled or expired permit in order to proceed with any investigation or disciplinary action relating to a permittee.

(g) The department may grant permits on forms prescribed by it, which shall be effective for not more than one year from the date of issuance and which shall not be transferable. Applications and permits shall be uniform throughout the state, on forms prescribed by the department.

(h) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department which shall not exceed the application processing costs of the department.

(i) A permit granted pursuant to this article may be renewed one year from the date of issuance, and annually thereafter, following the timely filing of a complete renewal application with all supporting documents, the payment of a permit renewal fee not to exceed the application processing costs of the department, and a review of the application by the department.

(j) Selling, transferring, or otherwise furnishing or obtaining any substance specified in subdivision (a) of Section 11100 without a permit is a misdemeanor or a felony.

(k) (1) No person under 18 years of age shall be eligible for a permit under this section.

(2) No business for which a permit has been issued shall employ a person under 18 years of age in the capacity of a manager, agent, or representative.

(*l*) (1) An applicant, or an applicant's employees who have direct access, management, or control of any substance listed under subdivision (a) of Section 11100, for an initial permit shall submit with the application two sets of 10-print fingerprint cards for each individual acting in the capacity of an owner, manager, agent, or representative for the applicant, unless the applicant's employees are exempted from this requirement by the Department of Justice. These exemptions may only be obtained upon the written request of the applicant.

(2) In the event of subsequent changes in ownership, management, or employment, the permittee shall notify the department in writing within 15 calendar days of the changes, and shall submit two sets of 10-print fingerprint cards for each individual not previously fingerprinted under this section.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 11100 of the Health and Safety Code proposed by this bill and AB 924. 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 11100 of the Health and Safety Code, and (3) this bill is enacted after AB 924, in which case Section 11100 of the Health and Safety Code, as amended by AB 924, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 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 979

An act to amend Sections 1247.4, 1247.63, 1247.64, 1247.66, and 1300 of, and to repeal Section 1247.95 of, the Business and Professions Code, relating to hemodialysis technicians.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 1247.4 of the Business and Professions Code is amended to read:

1247.4. The department shall adopt rules and regulations, by July 1, 2001, prescribing minimum training standards for hemodialysis technicians who are certified pursuant to paragraphs (2), (3), and (4) of subdivision (a) of Section 1247.6.

SEC. 2. Section 1247.63 of the Business and Professions Code is amended to read:

1247.63. (a) Certification of a hemodialysis technician issued by the department pursuant to subdivision (a) of Section 1247.6 shall be valid for four years.

(b) Those hemodialysis technicians certified by the department or the Board of Nephrology Examination for Nurses and Technicians (BONENT) before January 1, 1995, shall, before January 1, 1996, apply to renew their certification, or in the case of those technicians certified by the Board of Nephrology Examination for Nurses and Technicians (BONENT) obtain department certification, by submitting the fee required by subdivision (n) of Section 1300 and proof of previous certification. The department shall automatically renew the certification of those hemodialysis technicians who were certified before January 1, 1995, and who apply for renewal pursuant to this subdivision.

(c) For renewals occurring on or after January 1, 1996, a hemodialysis technician applying for renewal of his or her certification shall submit proof that he or she has obtained 30 hours of in-service training or continuing education in dialysis care or general health care as a requirement for the renewal of his or her certification.

SEC. 3. Section 1247.64 of the Business and Professions Code is amended to read:

1247.64. A hemodialysis technician may obtain the in-service training or continuing education required by subdivision (c) of Section 1247.63 from one or more of the following sources:

(a) Health-related courses offered by accredited postsecondary institutions.

(b) Health-related courses offered by continuing education providers approved by the California Board of Registered Nursing.

(c) Health-related courses offered by recognized health associations if the department determines the courses to be acceptable.

(d) Health-related, employer-sponsored in-service training or continuing education programs.

SEC. 4. Section 1247.66 of the Business and Professions Code is amended to read:

1247.66. (a) The department may deny, suspend, or revoke the certification of a hemodialysis technician if it finds that the hemodialysis technician is not in compliance with this article, or any regulations adopted by the department to administer this article.

(b) The department may deny, suspend, or revoke the certification of a hemodialysis technician for any of the following causes:

(1) Unprofessional conduct, which includes incompetence or gross negligence in carrying out his or her usual functions.

(2) Procuring a certificate by fraud, misrepresentation, or mistake.

(3) Making or giving any false statement or information in conjunction with the application for issuance or renewal of a certificate.

(4) Conviction of a crime substantially related to the qualifications, functions, and duties of a hemodialysis technician in which event the record of the conviction shall be conclusive evidence thereof.

(c) In addition to other acts constituting unprofessional conduct within the meaning of this article, all of the following constitute unprofessional conduct:

(1) Conviction for, or use of, any narcotic drug, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug, as defined in Article 7 (commencing with Section 4211) of Chapter 9, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the hemodialysis technician or any other person, or the public, to the extent that this use impairs the ability to conduct, with safety to the public, the practice of a hemodialysis technician.

(2) Abuse, whether verbal, physical, or mental, of a patient in any setting where health care is being rendered.

(d) Proceedings to deny, suspend, or revoke a certification under this article shall be conducted in accordance with Section 100171 of the Health and Safety Code.

SEC. 5. Section 1247.95 of the Business and Professions Code is repealed.

SEC. 6. Section 1300 of the Business and Professions Code is amended to read:

1300. The amount of application, registration, and license fees under this chapter shall be as follows:

(a) The application fee for a histocompatibility laboratory director's, clinical laboratory bioanalyst's, clinical chemist's, clinical microbiologist's, clinical laboratory toxicologist's, clinical cytogeneticist's, or clinical molecular biologist's license is thirty-eight dollars ($38). This fee shall be sixty-three dollars ($63) commencing on July 1, 1983.

(b) The annual renewal fee for a histocompatibility laboratory director's, clinical laboratory bioanalyst's, clinical chemist's, clinical microbiologist's, or clinical laboratory toxicologist's license is thirty-eight dollars ($38). This fee shall be sixty-three dollars ($63) commencing on July 1, 1983.

(c) The application fee for a clinical laboratory scientist's or limited clinical laboratory scientist's license is twenty-three dollars ($23). This fee shall be thirty-eight dollars ($38) commencing on July 1, 1983.

(d) The application and annual renewal fee for a cytotechnologist's license shall be fifty dollars ($50) commencing on January 1, 1991.

(e) The annual renewal fee for a clinical laboratory scientist's or limited clinical laboratory scientist's license is fifteen dollars ($15). This fee shall be twenty-five dollars ($25) commencing on July 1, 1983.

(f) The application fee for a clinical laboratory license is six hundred dollars ($600).

(g) The annual renewal fee for a clinical laboratory license is five hundred fifty-seven dollars ($557).

(h) The application fee for a certificate of accreditation issued pursuant to Section 1223 is one hundred fifty dollars ($150).

(i) The annual renewal fee for a certificate of accreditation issued pursuant to Section 1223 is one hundred dollars ($100).

(j) In addition, clinical laboratories providing cytology services shall pay an annual fee that shall be set by the department in an amount needed to meet but not exceed the department's costs of proficiency testing and special site surveys for these laboratories, and that shall be based upon the volume of cytologic slides examined by a laboratory. If the amount collected is less than or exceeds the amount needed for these purposes, the amount of fees collected from those laboratories in the following year shall be adjusted accordingly.

(k) The application fee for a trainee's license is eight dollars ($8). This fee shall be thirteen dollars ($13) commencing on July 1, 1983.

(*l*) The annual renewal fee for a trainee's license is five dollars ($5). This fee shall be eight dollars ($8) commencing on July 1, 1983.

(m) The application fee for a duplicate license is three dollars ($3). This fee shall be five dollars ($5) commencing on July 1, 1983.

(n) The delinquency fee is equal to the annual renewal fee.

(o) The director may establish a fee for examinations required under this chapter. The fee shall not exceed the total cost to the department in conducting the examination.

(p) The certification and renewal fees for hemodialysis technicians certified under subdivision (a) of Section 1247.6 shall be fifty dollars ($50).

(q) The annual fee for a clinical laboratory subject to registration under paragraph (2) of subdivision (a) of Section 1265 and performing only those clinical laboratory tests or examinations considered waived under CLIA is fifty dollars ($50). The annual fee for a clinical laboratory subject to registration under paragraph (2) of subdivision (a) of Section 1265 and performing only provider-performed microscopy, as defined under CLIA is seventy-five dollars ($75). A clinical laboratory performing both waived and provider-performed microscopy shall pay an annual registration fee of seventy-five dollars ($75).

(r) The costs of the department in conducting a complaint investigation, imposing sanctions, or conducting a hearing under this chapter shall be paid by the clinical laboratory. The fee shall be no greater than the fee the laboratory would pay under CLIA for the same type of activities and shall not be payable if the clinical laboratory would not be required to pay those fees under CLIA.

(s) The state, a district, city, county, city and county, or other political subdivision, or any public officer or body, shall be subject to the payment of fees established pursuant to this chapter or regulations adopted thereunder.

(t) In addition to the payment of registration or licensure fees, a clinical laboratory located outside the State of California shall reimburse the department for travel and per diem to perform any necessary onsite inspections at the clinical laboratory in order to ensure compliance with this chapter.

(u) Whenever a clinical laboratory has paid registration or compliance fees, or both, to HCFA under CLIA for the same period of time for which a license is issued under Section 1265, the fee required for the clinical laboratory license under subdivision (f) or (g), and as adjusted pursuant to Section 100450 of the Health and Safety Code, shall be reduced by the percentage of the total of all CLIA registration and compliance fees paid to HCFA by all California laboratories that are made available to the department to carry out its functions as a CLIA agent in the federal fiscal year immediately prior to when the license fee is due.

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.

CHAPTER 980

An act to amend Sections 215, 243, 3011, 3020, 3021, 4065, 4508, 6341, and 17400 of, to add Sections 126, 3046, 5000, 5001, 5002, and 17523 to, the Family Code, to amend Sections 19271.6, 19272, and 19273 of the Revenue and Taxation Code, and to amend Sections 213.5 and 11475.1 of, to amend and renumber Section 18205 of, and to add Section 11350.75 to, the Welfare and Institutions Code, relating to family law.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 126 is added to the Family Code, to read:

126. "Petitioner" includes plaintiff, where appropriate.

SEC. 2. Section 215 of the Family Code is amended to read:

215. After entry of a judgment of dissolution of marriage, nullity of marriage, legal separation of the parties, or paternity, or after a permanent order in any other proceeding in which there was at issue the visitation, custody, or support of a child, no modification of the judgment or order, and no subsequent order in the proceedings, is valid unless any prior notice otherwise required to be given to a party to the proceeding is served, in the same manner as the notice is otherwise permitted by law to be served, upon the party. For the purposes of this section, service upon the attorney of record is not sufficient.

SEC. 3. Section 243 of the Family Code is amended to read:

243. (a) When the matter first comes up for hearing, the applicant must be ready to proceed.

(b) If an order described in Section 240 has been issued without notice pending the hearing, the applicant must have served on the respondent, at least five days before the hearing, a copy of each of the following:

(1) The order to show cause.

(2) The application and the affidavits and points and authorities in support of the application.

(3) Any other supporting papers filed with the court.

(c) If the applicant fails to comply with subdivisions (a) and (b), the court shall dissolve the order.

(d) If service is made under subdivision (b), the respondent is entitled, as of course, to one continuance for a reasonable period, to respond to the application for the order.

(e) On motion of the applicant or on its own motion, the court may shorten the time provided in this section for service on the respondent.

(f) The respondent may, in response to the order to show cause, present affidavits relating to the granting of the order, and if the affidavits are served on the applicant at least two days before the hearing, the applicant is not entitled to a continuance on account of the affidavits.

SEC. 4. Section 3011 of the Family Code is amended to read:

3011. In making a determination of the best interest of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds relevant, consider all of the following:

(a) The health, safety, and welfare of the child.

(b) Any history of abuse by one parent or any other person seeking custody against any of the following:

(1) Any child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary.

(2) The other parent.

(3) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

As a prerequisite to the consideration of allegations of abuse, the court may require substantial independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this subdivision, "abuse against a child" means "child abuse" as defined in Section 11165.6 of the Penal Code and abuse against any of the other persons described in paragraph (2) or (3) means "abuse" as defined in Section 6203 of this code.

(c) The nature and amount of contact with both parents, except as provided in Section 3046.

(d) The habitual or continual illegal use of controlled substances or habitual or continual abuse of alcohol by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services. As used in this subdivision, "controlled substances" has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

(e) (1) Where allegations about a parent pursuant to subdivision (b) or (d) have been brought to the attention of the court in the

current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (b) of Section 6323.

(2) The provisions of this subdivision shall not apply if the parties stipulate in writing or on the record regarding custody or visitation.

SEC. 5. Section 3020 of the Family Code is amended to read:

3020. (a) The Legislature finds and declares that it is the public policy of this state to assure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children when making any orders regarding the physical or legal custody or visitation of children. The Legislature further finds and declares that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child.

(b) The Legislature finds and declares that it is the public policy of this state to assure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child, as provided in Section 3011.

(c) Where the policies set forth in subdivisions (a) and (b) of this section are in conflict, any court's order regarding physical or legal custody or visitation shall be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members.

SEC. 6. Section 3021 of the Family Code is amended to read:

3021. This part applies in any of the following:

(a) A proceeding for dissolution of marriage.

(b) A proceeding for nullity of marriage.

(c) A proceeding for legal separation of the parties.

(d) An action for exclusive custody pursuant to Section 3120.

(e) A proceeding to determine physical or legal custody or for visitation in a proceeding pursuant to the Domestic Violence Prevention Act (Division 10 (commencing with Section 6200)).

In an action under Section 6323, nothing in this subdivision shall be construed to authorize physical or legal custody, or visitation rights, to be granted to any party to a Domestic Violence Prevention Act proceeding who has not established a parent and child relationship pursuant to paragraph (2) of subdivision (a) of Section 6323.

(f) A proceeding to determine physical or legal custody or visitation in an action pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(g) A proceeding to determine physical or legal custody or visitation in an action brought by the district attorney pursuant to Section 11350.1 of the Welfare and Institutions Code.

SEC. 7. Section 3046 is added to the Family Code, to read:

3046. (a) If a party is absent or relocates from the family residence, the court shall not consider the absence or relocation as a factor in determining custody or visitation in either of the following circumstances:

(1) The absence or relocation is of short duration and the court finds that, during the period of absence or relocation, the party has demonstrated an interest in maintaining custody or visitation, the party maintains, or makes reasonable efforts to maintain, regular contact with the child, and the party's behavior demonstrates no intent to abandon the child.

(2) The party is absent or relocates because of an act or acts of actual or threatened domestic or family violence by the other party.

(b) The court may consider attempts by one party to interfere with the other party's regular contact with the child in determining if the party has satisfied the requirements of subdivision (a).

(c) This section does not apply to the following:

(1) A party against whom a protective or restraining order has been issued excluding the party from the dwelling of the other party or the child, or otherwise enjoining the party from assault or harrassment against the other party or the child, including, but not limited to, orders issued under Part 4 (commencing with Section 6300) of Division 10, orders preventing civil harassment or workplace violence issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, and criminal protective orders issued pursuant to Section 136.2 of the Penal Code.

(2) A party who abandons a child as provided in Section 7822.

SEC. 8. Section 4065 of the Family Code is amended to read:

4065. (a) Unless prohibited by applicable federal law, the parties may stipulate to a child support amount subject to approval of the court. However, the court shall not approve a stipulated agreement for child support below the guideline formula amount unless the parties declare all of the following:

(1) They are fully informed of their rights concerning child support.

(2) The order is being agreed to without coercion or duress.

(3) The agreement is in the best interests of the children involved.

(4) The needs of the children will be adequately met by the stipulated amount.

(5) The right to support has not been assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code and no public assistance application is pending.

(b) The parties may, by stipulation, require the child support obligor to designate an account for the purpose of paying the child

support obligation by electronic funds transfer pursuant to Section 4508.

(c) A stipulated agreement of child support is not valid unless the district attorney has joined in the stipulation by signing it in any case in which the district attorney is providing services pursuant to Section 11475.1 of the Welfare and Institutions Code. The district attorney shall not stipulate to a child support order below the guideline amount if the children are receiving assistance under the CalWORKs program, if an application for public assistance is pending, or if the parent receiving support has not consented to the order.

(d) If the parties to a stipulated agreement stipulate to a child support order below the amount established by the statewide uniform guideline, no change of circumstances need be demonstrated to obtain a modification of the child support order to the applicable guideline level or above.

SEC. 9. Section 4508 of the Family Code is amended to read:

4508. (a) This section does not apply to any child support obligor who is subject to an earnings assignment order pursuant to Chapter 8 (commencing with Section 5200).

(b) Except as provided in subdivision (a), every order or judgment to pay child support may require a child support obligor to designate an account for the purpose of paying the child support obligation by electronic funds transfer, as defined in subdivision (a) of Section 6479.5 of the Revenue and Taxation Code. The order or judgment may require the obligor to deposit funds in an interest-bearing account with a state or federally chartered commercial bank, a savings and loan association, or in shares of a federally insured credit union doing business in this state, and shall require the obligor to maintain funds in the account sufficient to pay the monthly child support obligation. The court may order that each payment be electronically transferred to either the obligee's account or the district attorney's account. The obligor shall be required to notify the obligee if the depository institution or the account number is changed. No interest shall accrue on any amount subject to electronic funds transfer as long as funds are maintained in the account that are sufficient to pay the monthly child support obligation.

SEC. 10. Section 5000 is added to the Family Code, to read:

5000. (a) When a petition or comparable pleading pursuant to this chapter is filed in a court of this state, the district attorney or petitioner may either (1) request the issuance of a summons or (2) request the court to issue an order requiring the respondent to appear personally at a specified time and place to show cause why an order should not be issued as prayed in the petition or comparable pleading on file.

(b) If a summons is issued for a petition or comparable pleading pursuant to this chapter, the district attorney or petitioner shall cause

a copy of the summons, petition, and other documents to be served upon the respondent according to law.

(c) If an order to show cause is issued on a petition or comparable pleading pursuant to this chapter requiring the respondent to appear at a specified time and place to respond to the petition, a copy of the order to show cause, the petition, and other documents shall be served upon the respondent at least 15 days prior to the hearing.

(d) A petition or comparable pleading pursuant to this chapter served upon a respondent in accordance with this section shall be accompanied by a blank responsive form that shall permit the respondent to answer the petition and raise any defenses by checking applicable boxes and by a blank income and expense declaration or simplified financial statement together with instructions for completion of the forms.

SEC. 11. Section 5001 is added to the Family Code, to read:

5001. (a) If, prior to filing, a petition or comparable pleading pursuant to this chapter is received by the district attorney or the superior court and the county in which the pleadings are received is not the appropriate jurisdiction for trial of the action, the court or the district attorney shall forward the pleadings and any accompanying documents to the appropriate court of this state or to the jurisdiction of another state without filing the pleadings or order of the court, and shall notify the petitioner, the California Central Registry, and the district attorney of the receiving county where and when the pleading was sent.

(b) If, after a petition or comparable pleading pursuant to this chapter has been filed with the superior court of a county, it appears that the respondent is not or is no longer a resident of the county in which the action has been filed, upon ex parte application by the district attorney or petitioner, the court shall transfer the action to the appropriate court of this state or to the appropriate jurisdiction of another state and shall notify the petitioner, the respondent, the California Central Registry, and the district attorney of the receiving county where and when the pleading was sent.

(c) If, after entry of an order by a court of this state on an action filed pursuant to this chapter or an order of another state registered in a court of this state for enforcement or modification pursuant to this chapter, it appears that the respondent is not or is no longer a resident of the county in which the foreign order has been registered, upon ex parte application by the district attorney of the transferring or receiving county or the petitioner, the court shall transfer the registered order and all documents subsequently filed in that action to the appropriate court of this state and shall notify the petitioner, the respondent, the California Central Registry, and the district attorney of the transferring and receiving county where and when the registered order and all other appropriate documents were sent. Transfer of certified copies of documents shall meet the requirements of this section.

(d) If, in an action initiated in a court of this state pursuant to this chapter or a predecessor law for interstate enforcement of support, the petitioner is no longer a resident of the county in which the action has been filed, upon ex parte application by the petitioner or the district attorney, the court shall transfer the action to the appropriate court of this state and shall notify the responding jurisdiction where and when the action was transferred.

(e) Notwithstanding subdivisions (b) and (c), above, if the respondent becomes a resident of another county or jurisdiction after an action or registered order under this chapter has been filed, the action may remain in the county where the action was filed until the action is completed.

SEC. 12. Section 5002 is added to the Family Code, to read:

5002. (a) In an action pursuant to this chapter prosecuted by the district attorney or the Attorney General that is initiated by service of summons and petition or other comparable pleading, the respondent may also be served with a proposed judgment consistent with the relief sought in the petition or other comparable pleading. If the respondent's income or income history is unknown to the district attorney, the district attorney may serve a form of proposed judgment with the petition and other documents on the respondent that shall inform the respondent 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 respondent's income is provided to the court. The respondent shall also receive notice that the proposed judgment will become effective if he or she fails to file a response with the court within 30 days after service.

(b) In any action pursuant to this chapter in which the judgment was obtained pursuant to presumed income, as set forth in this section, the court may relieve the respondent from that part of the judgment or order concerning the amount of child support to be paid in the manner set forth in Section 11356 of the Welfare and Institutions Code.

SEC. 13. Section 6341 of the Family Code is amended to read:

6341. (a) If the parties are married to each other and no other child support order exists or if there is a presumption under Section 7611 that the respondent is the natural father of a minor child and the child is in the custody of the petitioner, after notice and a hearing, the court may order a party to pay an amount necessary for the support and maintenance of the child if the order would otherwise be authorized in an action brought pursuant to Division 9 (commencing with Section 3500) or the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(b) An order issued pursuant to this section shall be without prejudice in an action brought pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

SEC. 14. Section 17400 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

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 for Region I provided in Sections 11452 and 11452.018 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 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.

SEC. 14.2. 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 for Region I provided in Sections 11452 and 11452.018 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 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. 14.4. Section 17400 of the Family Code, as added by Assembly Bill 196 of the 1999–2000 Regular Session, is amended to read:

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 for Region I provided in Sections 11452 and 11452.018 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. If the proposed judgment is entered by the court, the support order in the proposed judgment shall be effective as of the first day of the month following the filing of the complaint.

(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 in which 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 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 in which 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.

SEC. 14.6. 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 for Region I provided in Sections 11452 and 11452.018 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. If the proposed judgment is entered by the court, the support order in the proposed judgment shall be effective as of the first day of the month following the filing of the complaint.

(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 in which 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 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 in which 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. 15. Section 17523 is added to the Family Code, to read:

17523. (a) Notwithstanding any other provision of law, if a support obligor is delinquent in the payment of support and the local child support agency is enforcing the support obligation pursuant to Section 17400 or 17402, a lien for child support shall arise against the personal property of the support obligor in either of the following circumstances:

(1) By operation of law for all amounts of overdue support, regardless of whether the amounts have been adjudicated or otherwise determined.

(2) When either a court having continuing jurisdiction or the local child support agency determines a specific amount of arrearages is owed by the support obligor.

(b) The lien for child support shall be perfected by filing a notice of child support lien with the Secretary of State pursuant to Section 697.510 of the Code of Civil Procedure. Once filed, the child support lien shall have the same priority, force, and effect as a judgment lien on personal property pursuant to Article 3 (commencing with Section 697.510) of Chapter 2 of Division 2 of Article 9 of the Code of Civil Procedure.

(c) For purposes of this section, the following definitions shall apply:

(1) "Notice of child support lien" means a document filed with the Secretary of State that substantially complies with the requirements of Section 697.530 of the Code of Civil Procedure.

(2) "Support obligor is delinquent in payment of support" means that the support obligor has failed to make payment equal to one month's support obligation.

(3) "Personal property" means that property that is subject to attachment by a judgment lien pursuant to Section 697.530 of the Code of Civil Procedure.

(d) Nothing in this section shall affect the priority of any of the following interests:

(1) State tax liens as set forth in Article 2 (commencing with Section 7170) of Division 7 of Title 1 of the Government Code.

(2) Liens or security interests as set forth in Article 3 (commencing with Section 697.510) of Chapter 2 of Division 2 of Article 9 of the Code of Civil Procedure.

(e) As between competing child support liens and state tax liens, a child support lien arising under this section shall have priority over a state tax lien if (1) the child support lien is filed with the Secretary of State, (2) the notice of child support lien is filed in an action or proceeding in which the obligor may become entitled to property or money judgment, or (3) the levy for child support on personal property is made, before a notice of state tax lien is filed with the Secretary of State pursuant to Section 7171 of the Government Code or filed in an action or proceeding in accordance with Section 7173 of the Government Code.

(f) A personal property lien for child support arising in another state may be enforced in the same manner and to the same extent as a personal property lien arising in this state.

SEC. 16. Section 19271.6 of the Revenue and Taxation Code is amended to read:

19271.6. (a) The Franchise Tax Board, through a cooperative agreement with the State Department of Social Services, and in coordination with financial institutions doing business in this state, shall operate a Financial Institution Match System utilizing automated data exchanges to the maximum extent feasible. The Financial Institution Match System shall be implemented pursuant to guidelines prescribed by the State Department of Social Services and the Franchise Tax Board. These guidelines shall include a structure by which financial institutions, or their designated data processing agents, shall receive from the Franchise Tax Board the file or files of past-due support obligors compiled in accordance with subdivision (c), that the institution shall match with its own list of accountholders to identify past-due support obligor accountholders at the institution. To the extent allowed by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the guidelines shall include an option by which financial institutions without the technical ability to process the data exchange, or without the ability to employ a third-party data processor to process the data exchange, may forward to the Franchise Tax Board a list of all accountholders and their social security numbers, so that the Franchise Tax Board shall match that list with the file or files of past-due support obligors compiled in accordance with subdivision (c).

(b) The Financial Institution Match System shall not be subject to any limitation set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. However, any use of the information provided pursuant to this section for any purpose other than the enforcement and collection of a child support

delinquency, as set forth in Section 19271, shall be a violation of Section 19542.

(c) (1) Each county shall compile a file of support obligors with judgments and orders that are being enforced by district attorneys pursuant to Section 11475.1 of the Welfare and Institutions Code, and who are past due in the payment of their support obligations. The file shall be compiled, updated, and forwarded to the Franchise Tax Board, in accordance with the guidelines prescribed by the State Department of Social Services and the Franchise Tax Board.

(2) The Department of Justice, Child Support Program, shall compile a file of obligors with support arrearages from requests made by other states for administrative enforcement in interstate cases, in accordance with federal requirements (42 U.S.C. Sec. 666(a)(14)). This file shall be compiled and forwarded to the Franchise Tax Board in accordance with the guidelines prescribed by the State Department of Social Services, the Department of Justice, and the Franchise Tax Board. The file shall include, to the extent possible, the obligor's address.

(d) To effectuate the Financial Institution Match System, financial institutions subject to this section shall do all of the following:

(1) Provide to the Franchise Tax Board on a quarterly basis the name, record address and other addresses, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at the institution and who owes past-due support, as identified by the Franchise Tax Board by name and social security number or other taxpayer identification number.

(2) In response to a notice or order to withhold issued by the Franchise Tax Board, withhold from any accounts of the obligor the amount of any past-due support stated on the notice or order and transmit the amount to the Franchise Tax Board in accordance with Section 18670 or 18670.5.

(e) Unless otherwise required by applicable law, a financial institution furnishing a report or providing information to the Franchise Tax Board pursuant to this section shall not disclose to a depositor or an accountholder, or a codepositor or coaccountholder, that the name, address, social security number, or other taxpayer identification number or other identifying information of that person has been received from or furnished to the Franchise Tax Board.

(f) A financial institution shall incur no obligation or liability to any person arising from any of the following:

(1) Furnishing information to the Franchise Tax Board as required by this section.

(2) Failing to disclose to a depositor or accountholder that the name, address, social security number, or other taxpayer identification number or other identifying information of that person

was included in the data exchange with the Franchise Tax Board required by this section.

(3) Withholding or transmitting any assets in response to a notice or order to withhold issued by the Franchise Tax Board as a result of the data exchange. This paragraph shall not preclude any liability that may result if the financial institution does not comply with subdivision (b) of Section 18674.

(4) Any other action taken in good faith to comply with the requirements of this section.

(g) Information required to be submitted to the Franchise Tax Board pursuant to this section shall only be used by the Franchise Tax Board to collect past-due support pursuant to Section 19271. If the Franchise Tax Board has issued an earnings withholding order and the condition described in subparagraph (C) of paragraph (1) of subdivision (i) exists with respect to the obligor, the Franchise Tax Board shall not use the information it receives under this section to collect the past-due support from that obligor.

(1) With respect to files compiled under paragraph (1) of subdivision (c), the Franchise Tax Board shall forward to the counties, in accordance with guidelines prescribed by the State Department of Social Services and the Franchise Tax Board, information obtained from the financial institutions pursuant to this section. No county shall use this information for directly levying on any account. Each county shall keep the information confidential as provided by Section 11478.1 of the Welfare and Institutions Code.

(2) With respect to files compiled under paragraph (2) of subdivision (c), the amount collected by the Franchise Tax Board shall be deposited and distributed to the referring state in accordance with Section 19272.

(h) For those noncustodial parents owing past-due support for which there is a match under paragraph (1) of subdivision (d), the amount past due as indicated on the file or files compiled pursuant to subdivision (c) at the time of the match shall be a delinquency under this article for the purposes of the Franchise Tax Board taking any collection action pursuant to Section 18670 or 18670.5.

(i) (1) Each county shall notify the Franchise Tax Board upon the occurrence of the circumstances described in the following subparagraphs with respect to an obligor of past-due support:

(A) All of the following apply:

(i) A court has ordered an obligor to make scheduled payments on a child support arrearages obligation.

(ii) The obligor is in compliance with that order.

(B) An earnings assignment order or a notice of assignment that includes an amount for past-due support has been served on the obligated parent's employer and earnings are being withheld pursuant to the earnings assignment order or a notice of assignment.

(C) At least 50 percent of the obligated parent's earnings are being withheld for support.

(D) The obligor is less than 90 days delinquent in the payment of any amount of support. For purposes of this subparagraph, any delinquency existing at the time a case is received by a district attorney shall not be considered until 90 days have passed.

(E) A child support delinquency need not be referred to the Franchise Tax Board for collection if a jurisdiction outside this state is enforcing the support order.

(2) Upon notification, the Franchise Tax Board shall not use the information it receives under this section to collect any past-due support from that obligor.

(j) Notwithstanding subdivision (i), the Franchise Tax Board may use the information it receives under this section to collect any past-due support at any time if a county requests action be taken.

(k) The Franchise Tax Board may not use the information it receives under this section to collect any past-due support if a county has applied for and received an exemption from the State Department of Social Services as provided by subdivision (k) of Section 19271, unless that county specifically requests collection against that obligor. The Franchise Tax Board may not use the information it receives under this section to collect any past-due support if a county requests that action not be taken.

(*l*) For purposes of this section:

(1) "Account" means any demand deposit account, share or share draft account, checking or negotiable withdrawal order account, savings account, time deposit account, or a money market mutual fund account, whether or not the account bears interest.

(2) "Financial institution" has the same meaning as defined in Section 669A(d)(1) of Title 42 of the United States Code.

(3) "Past-due support" means any child support obligation that is unpaid on the due date for payment.

(m) Out of any money received from the federal government for the purpose of reimbursing financial institutions for their actual and reasonable costs incurred in complying with this section, the state shall reimburse those institutions. To the extent that money is not provided by the federal government for that purpose, the state shall not reimburse financial institutions for their costs in complying with this section.

(n) By March 1, 1998, the Franchise Tax Board and the Department of Social Services, in consultation with counties and financial institutions, shall jointly propose an implementation plan for inclusion in the annual Budget Act, or in other legislation that would fund this program. The implementation plan shall take into account the program's financial benefits, including the costs of all participating private and public agencies. It is the intent of the Legislature that this program shall result in a net savings to the state and the counties.

SEC. 17. Section 19272 of the Revenue and Taxation Code is amended to read:

19272. (a) Any child support delinquency collected by the Franchise Tax Board, including those amounts that result in overpayment of a child support delinquency, shall be deposited in the State Treasury, after clearance of the remittance, to the credit of the Special Deposit Fund and distributed as specified by interagency agreement executed by the Franchise Tax Board and the State Department of Social Services, with the concurrence of the Controller. Notwithstanding Section 13340 of the Government Code, all moneys deposited in the Special Deposit Fund pursuant to this article are hereby continuously appropriated, without regard to fiscal years, for purposes of making distributions.

(b) When a child support delinquency, or any portion thereof, has been collected by the Franchise Tax Board pursuant to this article, the district attorney or other IV-D agency enforcing the order shall be notified that the delinquency or some portion thereof has been collected and shall be provided any other necessary relevant information requested.

(c) The referring county district attorney shall receive credit for the amount of collections made pursuant to the referral, and shall receive the applicable child support enforcement incentives pursuant to Section 15200.81 of the Welfare and Institutions Code. Collection costs incurred by the Franchise Tax Board shall be paid by federal reimbursement with any balance to be paid from the General Fund.

(d) For collections made pursuant to a referral for administrative enforcement or an interstate case, the IV-D agency in this state shall receive credit for the amount of collections made pursuant to the referral and shall receive the applicable federal child support enforcement incentives.

SEC. 17.5. Section 19272 of the Revenue and Taxation Code is amended to read:

19272. (a) Any child support delinquency collected by the Franchise Tax Board, including those amounts that result in overpayment of a child support delinquency, shall be deposited in the State Treasury, after clearance of the remittance, to the credit of the Special Deposit Fund and distributed as specified by interagency agreement executed by the Franchise Tax Board and the State Department of Social Services, with the concurrence of the Controller. Notwithstanding Section 13340 of the Government Code, all moneys deposited in the Special Deposit Fund pursuant to this article are hereby continuously appropriated, without regard to fiscal years, for purposes of making distributions.

(b) When a child support delinquency, or any portion thereof, has been collected by the Franchise Tax Board pursuant to this article, the local child support agency or other IV-D agency enforcing the order 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 collections made pursuant to a referral for administrative enforcement or an interstate case, the IV-D agency in this state shall receive credit for the amount of collections made pursuant to the referral and shall receive the applicable federal child support enforcement incentives.

(e) 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.

(f) 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. 18. Section 19273 of the Revenue and Taxation Code is amended to read:

19273. (a) For the collection pursuant to this article of any child support delinquency from any obligated parent who is out of state, the Franchise Tax Board may utilize the procedures and mechanisms currently available for collection of taxes owed from out-of-state taxpayers, pursuant to Section 19376. As necessary, the Franchise Tax Board shall seek reciprocal agreements with other states to improve its ability to collect child support payments from out-of-state obligated parents on behalf of custodial parents residing in California. The Franchise Tax Board shall also share with the Internal Revenue Service any tax return information with respect to the location of the obligated parent, and may pursue agreements with the Internal Revenue Service, as permitted by federal law, to improve collections of child support delinquencies from out-of-state obligated parents through cooperative agreements with the service.

(b) The California Child Support Automated System, established pursuant to Chapter 4 (commencing with Section 10080) of Part 1 of Division 9 of the Welfare and Institutions Code, shall, for purposes of

this article, include the capacity to interface and exchange information with the Franchise Tax Board, and if feasible, the Internal Revenue Service, to enable the immediate reporting and tracking of obligated parent information.

(c) The State Department of Social Services and the Franchise Tax Board shall enter into any interagency agreements that are necessary for the implementation of this article.

SEC. 19. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian, or current or former member of the child's household from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any parent, guardian, or current or former member of the child's household from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining a parent, guardian, or current or former member of the child's household from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2).

(b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian or current or former member of the child's household from molesting, attacking, threatening, sexually assaulting, stalking, or battering the child; (2) excluding any parent, guardian, or current or former member of the child's household from the dwelling of the person who has care, custody, and control of the child; or (3) enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.

(c) In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held

in proceedings to declare a child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings regarding the dependent child or ward.

(d) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivisions (a), (b), and (c). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed three years, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(e) (1) The juvenile court may issue an order made pursuant to subdivision (a), (c), or (d) excluding a person from a residence or dwelling. This order may be issued for the time and on the conditions that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(f) Any order issued pursuant to subdivision (a), (b), (c), or (d) shall state on its face the date of expiration of the order.

(g) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a), (b), (c), or (d), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the child and other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a), (b), (c), or (d) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(h) Any willful and knowing violation of any order granted pursuant to subdivision (a), (b), (c), or (d) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

SEC. 19.5. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian, or current or former member of the child's household from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any parent, guardian, or current or former member of the child's household from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining a parent, guardian, or current or former member of the child's household from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2).

(b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian or current or former member of the child's household from molesting, attacking, threatening, sexually assaulting, stalking, or battering the child; (2) excluding any parent, guardian, or current or former member of the child's household from the dwelling of the person who has care, custody, and control of the child; or (3) enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.

(c) In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held in proceedings to declare a child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings regarding the dependent child or ward.

(d) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivisions (a), (b), and (c). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed three years, unless

otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(e) (1) The juvenile court may issue an order made pursuant to subdivision (a), (c), or (d) excluding a person from a residence or dwelling. This order may be issued for the time and on the conditions that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(f) Any order issued pursuant to subdivision (a), (b), (c), or (d) shall state on its face the date of expiration of the order.

(g) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a), (b), (c), or (d), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the child and other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a), (b), (c), or (d) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(h) Any willful and knowing violation of any order granted pursuant to subdivision (a), (b), (c), or (d) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

(i) A juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms

adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(j) Information on any juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

SEC. 20. Section 11350.75 is added to the Welfare and Institutions Code, to read:

11350.75. (a) Notwithstanding any other provision of law, if a support obligor is delinquent in the payment of support and the local child support agency is enforcing the support obligation pursuant to Section 11350 or 11475.1, a lien for child support shall arise against the personal property of the support obligor in either of the following circumstances:

(1) By operation of law for all amounts of overdue support, regardless of whether the amounts have been adjudicated or otherwise determined.

(2) When either a court having continuing jurisdiction or the local child support agency determines a specific amount of arrearages is owed by the support obligor.

(b) The lien for child support shall be perfect by filing a notice of child support lien with the Secretary of State pursuant to Section 697.510 of the Code of Civil Procedure. Once filed, the child support lien shall have the same priority, force, and effect as a judgment lien on personal property pursuant to Article 3 (commencing with Section 697.510) of Chapter 2 of Division 2 of Article 9 of the Code of Civil Procedure.

(c) For purposes of this section, the following definitions shall apply:

(1) "Notice of child support lien" means a document filed with the Secretary of State that substantially complies with the requirements of Section 697.550 of the Code of Civil Procedure.

(2) "Support obligor is delinquent in payment of support" means that the support obligor has failed to make payment equal to one month's support obligation.

(3) "Personal property" means that property that is subject to attachment by a judgment lien pursuant to Section 697.530 of the Code of Civil Procedure.

(d) Nothing in this section shall affect the priority of any of the following interests:

(1) State tax liens as set forth in Article 2 (commencing with Section 7170) of Division 7 of Title 1 of the Government Code.

(2) Liens or security interests as set forth in Article 3 (commencing with Section 697.510) of Chapter 2 of Division 2 of Article 9 of the Code of Civil Procedure.

(e) As between competing child support liens and state tax liens, a child support lien arising under this section shall have priority over a state tax lien if (1) the child support lien is filed with the Secretary

of State, (2) the notice of child support lien is filed in an action or proceeding in which the obligor may become entitled to property or money judgment, or (3) the levy for child support on personal property is made, before a notice of state tax lien is filed with the Secretary of State pursuant to Section 7171 of the Government Code or filed in an action or proceeding in accordance with Section 7173 of the Government Code.

(f) A personal property lien for child support arising in another state may be enforced in the same manner and to the same extent as a personal property lien arising in this state.

SEC. 21. Section 11475.1 of the Welfare and Institutions Code is amended to read:

11475.1. (a) Each county shall maintain a single organizational unit located in the office of the district attorney which shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The district attorney shall take appropriate action, both civil and criminal, to establish, modify, and enforce child support and, when appropriate, enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when appropriate, may take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal. The district attorney shall refer all child support delinquencies to the Franchise Tax Board pursuant to Section 19271 of the Revenue and Taxation Code.

(b) Actions brought by the district attorney to establish paternity or child support or to enforce child support obligations shall be completed within the time limits set forth by federal law. The district attorney's responsibility applies to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(c) (1) The Judicial Council, in consultation with the department and representatives of the California Family Support Council, the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and a legal services organization providing representation on child support matters, shall develop simplified summons, complaint, and answer forms for any action for support brought pursuant to this section or Section 11350.1. The Judicial Council may combine the summons and complaint in a single form.

(2) The simplified complaint form shall provide the defendant with notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of the Family Code based upon the income or

income history of the defendant as known to the district attorney. If the defendant's income or income history is unknown to the district attorney, the complaint shall inform the defendant that income shall be presumed in an amount that results in a court order equal to the minimum basic standard of adequate care for Region I provided in Sections 11452 and 11452.018 unless information concerning the defendant's income is provided to the court. The complaint form shall be accompanied by a proposed judgment. The complaint form shall include a notice to the defendant that the proposed judgment will become effective if he or she fails to file an answer with the court within 30 days of service.

(3) (A) The simplified answer form shall be written in simple English and shall permit a defendant to answer and raise defenses by checking applicable boxes. The answer form shall include instructions for completion of the form and instructions for proper filing of the answer.

(B) The answer form shall be accompanied by a blank income and expense declaration or simplified financial statement and instructions on how to complete the financial forms. The answer form shall direct the defendant to file the completed income and expense declaration or simplified financial statement with the answer, but shall state that the answer will be accepted by a court without the income and expense declaration or simplified financial statement.

(C) The clerk of the court shall accept and file answers, income and expense declarations, and simplified financial statements that are completed by hand provided they are legible.

(4) (A) The simplified complaint form prepared pursuant to this subdivision shall be used by the district attorney or the Attorney General in all cases brought under this section or Section 11350.1.

(B) The simplified answer form prepared pursuant to this subdivision shall be served on all defendants with the simplified complaint. Failure to serve the simplified answer form on all defendants shall not invalidate any judgment obtained. However, failure to serve the answer form may be used as evidence in any proceeding under Section 11356 of this code or Section 473 of the Code of Civil Procedure.

(C) The Judicial Council shall add language to the governmental summons, for use by the district attorney with the governmental complaint to establish parental relationship and child support, informing defendants that a blank answer form should have been received with the summons and additional copies may be obtained from either the district attorney's office or the superior court clerk.

(d) In any action brought or enforcement proceedings instituted by the district attorney pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the district attorney at any time within the period otherwise specified for the enforcement of a

support judgment, notwithstanding the fact that the child has attained the age of majority.

(e) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the units established by this section a notice, in clear and simple language prescribed by the Director of Social Services, that the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals whether or not they are recipients of public social services.

(f) In any action to establish a child support order brought by the district attorney in the performance of duties under this section, the district attorney may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order shall have the same force and effect as a like or similar order under the Family Code.

The district attorney shall file a motion for an order for temporary support within the following time limits:

(1) If the defendant is the mother, a presumed father under Section 7611 of the Family Code, or any father where the child is at least six months old when the defendant files his answer, the time limit is 90 days after the defendant files an answer.

(2) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

If the district attorney fails to file a motion for an order for temporary support within time limits specified in this section, the district attorney shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the motion was filed, or, if no motion is filed, when a final judgment is entered.

Nothing in this section prohibits the district attorney from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the State Department of Social Services.

Nothing in this section shall otherwise limit the ability of the district attorney from securing and enforcing orders for support of a spouse or former spouse as authorized under any other provision of law.

(g) As used in this article, "enforcing obligations" includes, but is not limited to, (1) the use of all interception and notification systems operated by the State Department of Social Services for the purposes of aiding in the enforcement of support obligations, (2) the obtaining by the district attorney of an initial order for child support, which may include medical support or which is for medical support only, by civil or criminal process, (3) the initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, or the initiation of a motion or order to show cause to obtain an order for medical support, and the response to a motion or order to show cause brought by an obligor parent to decrease or terminate an existing medical support order, without regard to whether the child is receiving public assistance, (4) the response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order when the child or children are residing with the obligee parent and the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor, and (5) the use of the collection services of the Franchise Tax Board to enforce the collection of child support delinquencies under Section 19271 of the Revenue and Taxation Code.

(h) As used in this section, "out of wedlock" means that the biological parents of the child were not married to each other at the time of the child's conception.

(i) The district attorney is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.). Notwithstanding any other law, the district attorney shall utilize the collection services of the Franchise Tax Board under Section 19271 of the Revenue and Taxation Code.

Nothing in this section shall limit the authority of the district attorney granted by other sections of this code or otherwise granted by law, except to the extent that the law is inconsistent with the requirement to refer child support delinquencies to the Franchise Tax Board for collection pursuant to Section 19271 of the Revenue and Taxation Code.

(j) In the exercise of the authority granted under this article, the district attorney may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under the Family Code, or other proceeding wherein child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the district attorney may request any relief as appropriate that the district attorney is authorized to seek.

(k) The district attorney shall comply with any guidelines established by the State Department of Social Services which set time

standards for responding to requests for assistance in locating absent parents, establishing paternity, establishing child support awards, and collecting child support payments.

(*l*) As used in this article, medical support activities which the district attorney is authorized to perform are limited to the following:

(1) The obtaining and enforcing of court orders for health insurance coverage.

(2) Any other medical support activity mandated by federal law or regulation.

(m) (1) Notwithstanding any other provision of law, venue for an action or proceeding under this part shall be determined as follows:

(A) Venue shall be in the superior court in the county that is currently expending public assistance.

(B) If public assistance is not currently being expended, venue shall be in the superior court in the county where the child who is entitled to current support resides or is domiciled.

(C) If current support is no longer payable through, or enforceable by, the district attorney, venue shall be in the superior court in the county that last provided public assistance for actions to enforce arrearages assigned pursuant to Section 11477.

(D) If subparagraphs (A), (B), and (C) do not apply, venue shall be in the superior court in the county of residence of the support obligee.

(E) If the support obligee does not reside in California, and subparagraphs (A), (B), (C), and (D) do not apply, venue shall be in the superior court of the county of residence of the obligor.

(2) Notwithstanding paragraph (1), if the child becomes a resident of another county after an action under this part has been filed, venue may remain in the county where the action was filed until the action is completed.

(n) The district attorney of one county may appear on behalf of the district attorney of any other county in an action or proceeding under this part.

SEC. 22. Section 18205 of the Welfare and Institutions Code is amended and renumbered to read:

18205.5. The director may, pursuant to this article, approve county demonstration projects to provide employment and training services to nonsupporting, noncustodial parents of children who are recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 or Article 5 (commencing with Section 18241) of Chapter 3.3 of Part 6 or any other public social service as defined in Section 10051. 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 or Article 5 (commencing with Section 18241) of Chapter 3.3 of Part 6 or any other public social service as defined in Section 10051 to participate, as appropriate, in job training, job search, vocational rehabilitation, and other work activities, as well

as in parental development training. The superior court, the child support division of the district attorney's office, and the county welfare department, in a demonstration county, shall all agree to cooperate in the operation of the demonstration project.

SEC. 22.5. Section 18205 of the Welfare and Institutions Code 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 or Article 5 (commencing with Section 18241) of Chapter 3.3 of Part 6 or any other public social service as defined in Section 10051. 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 or Article 5 (commencing with Section 18241) of Chapter 3.3 of Part 6 or any other public social service as defined in Section 10051 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.

SEC. 23. The expansion of eligibility for services under Section 18205.5 of the Welfare and Institutions Code provided for under Section 22 of this act shall be accomplished within budgeted resources.

SEC. 24. Section 16 of this act shall become operative July 1, 2001.

SEC 25. Section 15 of this bill shall become operative only if AB 196 is enacted and becomes operative on or before January 1, 2000, and this bill is enacted after AB 196, in which case, Section 20 of this bill shall not become operative.

SEC. 26. (a) Section 14 of this bill shall become operative only if (1) AB 196 is enacted and becomes operative on or before January 1, 2000, and that bill adds Section 17400 to the Family Code, (2) SB 542 is not enacted or as enacted does not amend that section, (3) AB 380 is not enacted or as enacted does not amend Section 11475.1 of the Welfare and Institutions Code, and (4) this bill is enacted last, in which case, Sections 14.2, 14.4, 14.6, and 21 of this bill shall not become operative.

(b) Section 14.2 of this bill incorporates amendments to Section 17400 of the Family Code, as added by AB 196, proposed by both this bill and SB 542. It shall only become operative if (1) AB 196 is enacted and becomes operative on or before January 1, 2000, and that bill adds Section 17400 to the Family Code, (2) both this bill and SB 542 are enacted and become effective on or before January 1, 2000, (3) both this bill and SB 542 amend Section 17400 of the Family Code, as added

by AB 196, (4) AB 380 is not enacted or as enacted does not amend Section 11475.1 of the Welfare and Institutions Code, and (5) this bill is enacted last, in which case Sections 14, 14.4, 14.6, and 21 of this bill shall not become operative.

(b) Section 14.4 of this bill incorporates amendments to Section 17400 of the Family Code, as added by AB 196, proposed by both this bill and AB 380. It shall only become operative if (1) AB 196 is enacted and becomes operative on or before January 1, 2000, and that bill adds Section 17400 to the Family Code, (2) both this bill and AB 380 are enacted and become effective on or before January 1, 2000, (3) AB 380 amends Section 11475.1 of the Welfare and Institutions Code, (4) SB 542 is not enacted or as enacted does not amend Section 17400 of the Family Code, and (5) this bill is enacted last, in which case Sections 14, 14.2, 14.6, and 21 of this bill shall not become operative.

(c) Section 14.6 of this bill incorporates amendments to Section 17400 of the Family Code, as added by AB 196, proposed by this bill, SB 542, and AB 380. It shall only become operative if (1) AB 196 is enacted and becomes operative on or before January 1, 2000, and that bill adds Section 17400 to the Family Code, (2) this bill, SB 542, and AB 380 are enacted and become effective on or before January 1, 2000, (3) both this bill and SB 542 amend Section 17400 of the Family Code, as added by AB 196, (4) AB 380 amends Section 11475.1 of the Welfare and Institutions Code, and (5) this bill is enacted last, in which case Sections 14, 14.2, 14.4, and 21 of this bill shall not become operative.

(d) Section 21 of his bill shall become operative only if AB 196 is not enacted or as enacted does not repeal Section 11475.1 of the Welfare and Institutions Code.

SEC. 27. Section 17.5 of this bill incorporates amendments to Section 19272 of the Revenue and Taxation Code proposed by both this bill and SB 542. 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 19272 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 542, in which case Section 17 of this bill shall not become operative.

SEC. 28. Section 19.5 of this bill incorporates amendments to Section 213.5 of the Welfare and Institutions Code proposed by both this bill and AB 825. 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 213.5 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 825, in which case Section 19 of this bill shall not become operative.

SEC. 28. Section 22.5 of this bill incorporates amendments to Section 18205 of the Welfare and Institutions Code proposed by both this bill and SB 542. 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 18205 of the Welfare and Institutions Code, and

(3) this bill is enacted after SB 542, in which case Section 22 of this bill shall not become operative.

SEC. 29. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 981

An act to add Article 10 (commencing with Section 17077.10) to Chapter 12.5 of Part 10 of the Education Code, to amend Section 15814.15 of the Government Code, and to amend Section 25008.5 of the Public Resources Code, relating to energy resources.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Article 10 (commencing with Section 17077.10) is added to Chapter 12.5 of Part 10 of the Education Code, to read:

Article 10. Energy Analysis and Report

17077.10. (a) As part of the requirements for submission of an application to the State Allocation Board for funding pursuant to this chapter for any new construction or modernization project, the applicant school district may, at the time of submission of the final drawings to the Division of the State Architect, certify that an energy analysis and report has been prepared that sets forth the utility savings that would be generated if the facilities were designed, constructed, and equipped, with the energy efficiency and renewable technologies that would make the facilities exceed the minimum building energy-efficiency standards mandated for new public buildings pursuant to the latest edition of the California

Building Standards Code through the use of energy efficiency and renewable energy technologies.

(b) The energy analysis and report shall include a verifiable life-cycle cost analysis for each proposed energy conservation measure and renewable energy that may include, but need not be limited to, photovoltaic parking lot and security lighting, and solar swimming pool and domestic water heating, showing a return on investment of less than 15 years.

(c) The cost of the energy analyses and reports shall not exceed:

(1) Seven thousand five hundred dollars ($7,500) per project for elementary schools.

(2) Ten thousand dollars ($10,000) per project for middle schools.

(3) Fifteen thousand dollars ($15,000) per project for high schools.

(d) An applicant school district may count the following funds or expenditures toward meeting the local matching funds requirement under this chapter:

(1) The amount from any local sources actually expended on the project by the applicant school district for an energy audit.

(2) The amount actually applied to the project from any incentive, grant, or rebate, received by the applicant school district from a program funded pursuant to Section 381 of the Public Utilities Code.

SEC. 2. Section 15814.15 of the Government Code is amended to read:

15814.15. (a) The board may issue revenue bonds, notes, including commercial paper notes and other forms of negotiable short-term indebtedness, and bond anticipation notes pursuant to Chapter 5 (commencing with Section 15830) to finance the cost of cogeneration equipment, alternative energy equipment, and conservation measures constituting the public buildings authorized by this chapter. The total amount of revenue bonds, notes, including commercial paper notes and other forms of negotiable short-term indebtedness, and bond anticipation notes authorized to be issued pursuant to this section in each of the 10 fiscal years beginning with the 1982–83 fiscal year is fifty million dollars ($50,000,000), for a total of five hundred million dollars ($500,000,000). Any portion of the authorization not used in any fiscal year may be used in any future fiscal year.

(b) 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 25008.5 of the Public Resources Code is amended to read:

25008.5. (a) The Legislature hereby finds and declares that in order to maximize public benefit from private sector participation in state operations and to maximize the Legislature's ability to devote limited resources of the state to the responsibilities of state government that are less attractive to private sector investment, it is the policy of the state to encourage third-party financing of energy

and water projects, including, but not limited to, cogeneration facilities, at state-owned sites.

(b) The Legislature further finds and declares that the development of energy and water projects at state-owned sites can be accelerated where reasonable incentives are provided to the siting institutions. These incentives are necessary to offset the long-term administrative, operational, and technical complexities of energy and water projects developed under this section. Reasonable incentives for implementing the policy of this section shall include the sharing of benefits derived from energy and water projects between the state and the siting institution. The benefits to the state and siting institutions derived from projects implemented under this section may include, but are not limited to, annual cash revenues, avoided capital costs, reduced energy costs, reduced water costs, site improvements, and additional operations and maintenance resources. The annual cash revenues derived from those projects shall be shared equally between the state and the siting institution, if both of the following conditions are met:

(1) The use of cash and avoided cost benefits by siting institutions is to be limited to improvement of ongoing maintenance, deferred maintenance, cost-effective energy improvements, and other infrastructure improvements. To the extent an institution receives annual cash revenues under this section, the institution shall retain any money it receives, but not to exceed one-half of this amount, in a special deposit fund account, which shall be continuously appropriated to the institution for the purposes of this section. The state's benefit share, and the siting institution's benefit share that exceeds its needs, shall be deposited in the Energy and Resources Fund or, if this fund is not in existence, the General Fund for the purpose of investing in renewable resources programs and energy efficiency improvements at state facilities.

(2) The use of benefits shall be in addition to, and shall not supplant or replace, funding from traditional sources for a siting institution's normal operations and maintenance or capital outlay budgets.

(c) The Legislature further finds and declares that a benefit-sharing incentive is applicable to energy projects reported to, or authorized by, the Legislature pursuant to Section 13304 or 14671.6 of the Government Code. This section shall not apply to energy projects which are constructed on or at facilities or property of the State Water Resources Development System.

(d) Notwithstanding Section 7550.5 of the Government Code, the Department of General Services shall submit annual reports to the Legislature on the cost benefit aspects in carrying out this section.

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

CHAPTER 982

An act to amend Sections 5510, 5536.1, 5536.25, 5582.1, 5616, 7137, 7141, 7159, 8698, 8698.1, 8698.5, and 8698.6 of the Business and Professions Code, to amend Section 3260.1 of the Civil Code, to amend Section 116.220 of the Code of Civil Procedure, to amend Section 19825 of the Health and Safety Code, and to amend Section 3800 of the Labor Code, relating to businesses and professions, and making an appropriation therefor.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 5510 of the Business and Professions Code is amended to read:

5510. There is in the Department of Consumer Affairs a California Architects Board which consists of 10 members.

Any reference in law to the California Board of Architectural Examiners shall mean the California Architects Board.

This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 1.5. Section 5536.1 of the Business and Professions Code is amended to read:

5536.1. (a) All persons preparing or being in responsible control of plans, specifications, and instruments of service for others shall sign those plans, specifications, and instruments of service and all contracts therefor, and if licensed under this chapter shall affix a stamp, which complies with subdivision (b), to those plans, specifications, and instruments of service, as evidence of the person's responsibility for those documents. Failure of any person to comply with this subdivision is a misdemeanor punishable as provided in Section 5536. This section shall not apply to employees of persons licensed under this chapter while acting within the course of their employment.

(b) For the purposes of this chapter, any stamp used by any architect licensed under this chapter shall be of a design authorized by the board which shall at a minimum bear the licensee's name, his

or her license number, the legend "licensed architect" and the legend "State of California," and which shall provide a means of indicating the renewal date of the license.

(c) The preparation of plans, specifications, or instruments of service for any building, except the buildings described in Section 5537, by any person who is not licensed to practice architecture in this state, is a misdemeanor punishable as provided in Section 5536.

(d) The board may adopt regulations necessary for the implementation of this section.

SEC. 2. Section 5536.25 of the Business and Professions Code is amended to read:

5536.25. (a) A licensed architect who signs and stamps plans, specifications, reports, or documents shall not be responsible for damage caused by subsequent changes to or uses of those plans, specifications, reports, or documents, where the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved in writing by the licensed architect who originally signed the plans, specifications, reports, or documents, provided that the written authorization or approval was not unreasonably withheld by the architect and the architectural service rendered by the architect who signed and stamped the plans, specifications, reports, or documents was not also a proximate cause of the damage.

(b) The signing and stamping of plans, specifications, reports, or documents which relate to the design of fixed works shall not impose a legal duty or responsibility upon the person signing the plans, specifications, reports, or documents to observe the construction of the fixed works which are the subject of the plans, specifications, reports, or documents. However, this section shall not preclude an architect and a client from entering into a contractual agreement which includes a mutually acceptable arrangement for the provision of construction observation services. This subdivision shall not modify the liability of an architect who undertakes, contractually or otherwise, the provision of construction observation services for rendering those services.

(c) "Construction observation services" means periodic observation of completed work to determine general compliance with the plans, specifications, reports, or other contract documents. However, "construction observation services" does not mean the superintendence of construction processes, site conditions, operations, equipment, or personnel, or the maintenance of a safe place to work or any safety in, on, or about the site.

For purposes of this subdivision, "periodic observation" means visits by an architect, or his or her agent, to the site of a work of improvement.

SEC. 3. Section 5582.1 of the Business and Professions Code is amended to read:

5582.1. (a) The fact that the holder of a license has affixed his or her signature to plans, drawings, specifications, or other instruments of service which have not been prepared by him or her, or under his or her responsible control, constitutes a ground for disciplinary action.

(b) The fact that the holder of a license has permitted his or her name to be used for the purpose of assisting any person to evade the provisions of this chapter constitutes a ground for disciplinary action.

SEC. 3.5. Section 5616 of the Business and Professions Code is amended to read:

5616. Any landscape architect who agrees to provide professional services pursuant to this chapter shall provide every client with a detailed written contract. That written contract shall include, but not be limited to, all of the following:

(a) A description of services to be provided by the landscape architect to the client.

(b) A description of any basis of compensation applicable to the contract, including the total price that is required to complete the contract, and the method of payment agreed upon by both parties.

(c) A notice that reads:

"Landscape architects are licensed by the State of California."

(d) The name, address, and license number of the landscape architect and the name and address of the client.

(e) A description of the procedure that the landscape architect and client will use to accommodate additional services.

SEC. 3.7. Section 7137 of the Business and Professions Code is amended to read:

7137. The amount of the fees prescribed by this chapter shall be fixed by the board according to the following schedule:

(a) The application fee for an original license in a single classification shall be two hundred fifty dollars ($250).

The application fee for each additional classification applied for in connection with an original license shall be fifty dollars ($50).

The application fee for each additional classification pursuant to Section 7059 shall be fifty dollars ($50).

The application fee to replace a responsible managing officer or employee pursuant to Section 7068.2 shall be fifty dollars ($50).

(b) The fee for rescheduling an examination for an applicant who has applied for an original license, additional classification, a change of responsible managing officer or responsible managing employee, or for an asbestos certification or hazardous substance removal certification, shall be fifty dollars ($50).

(c) The initial license fee for an active or inactive license shall be one hundred fifty dollars ($150).

(d) The renewal fee for an active license shall be three hundred dollars ($300).

The renewal fee for an inactive license shall be one hundred fifty dollars ($150).

(e) The delinquency fee is an amount equal to 50 percent of the renewal fee, if the license is renewed more than 30 days after its expiration.

(f) The registration fee for a home improvement salesperson shall be fifty dollars ($50).

(g) The renewal fee for a home improvement salesperson registration shall be seventy-five dollars ($75).

(h) The application fee for an asbestos certification examination shall be fifty dollars ($50).

(i) The application fee for a hazardous substance removal or remedial action certification examination shall be fifty dollars ($50).

SEC. 3.9. Section 7141 of the Business and Professions Code is amended to read:

7141. Except as otherwise provided in this chapter, a license may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the registrar, and payment of the appropriate renewal fee. If the license is renewed after the expiration date, the licensee shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which an acceptable renewal application is filed and the delinquency fee is paid pursuant to Section 7137 and the licensee shall be considered as unlicensed during the time between the expiration date and the date the renewal becomes effective. If so renewed, the license shall continue in effect through the date provided in Section 7140 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

If a license is not renewed within three years, the licensee shall make application for a license pursuant to Section 7066.

SEC. 4. Section 7159 of the Business and Professions Code is amended to read:

7159. This section applies only to home improvement contracts, as defined in Section 7151.2, between a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction and who contracts with an owner or tenant for work upon a residential building or structure, or upon land adjacent thereto, for proposed repairing, remodeling, altering, converting, modernizing, or adding to the residential building or structure or land adjacent thereto, and where the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars ($500).

Every home improvement contract and every contract, the primary purpose of which is the construction of a swimming pool, is subject to this section. Every contract and any changes in the contract subject to this section shall be evidenced by a writing and shall be signed by all the parties to the contract. The writing shall contain all of the following:

(a) The name, address, and license number of the contractor, and the name and registration number of any salesperson who solicited or negotiated the contract.

(b) The approximate dates when the work will begin and on which all construction is to be completed.

(c) A plan and scale drawing showing the shape, size, dimensions, and construction and equipment specifications for a swimming pool and for other home improvements, a description of the work to be done and description of the materials to be used and the equipment to be used or installed, and the agreed consideration for the work.

(d) If the payment schedule contained in the contract provides for a downpayment to be paid to the contractor by the owner or the tenant before the commencement of work, the downpayment may not exceed two hundred dollars ($200) or 2 percent of the contract price for swimming pools, or one thousand dollars ($1,000) or 10 percent of the contract price for other home improvements, excluding finance charges, whichever is less.

(e) A schedule of payments showing the amount of each payment as a sum in dollars and cents. In no event may the payment schedule provide for the contractor to receive, nor may the contractor actually receive, payments in excess of 100 percent of the value of the work performed on the project at any time, excluding finance charges, except that the contractor may receive an initial downpayment authorized by subdivision (d). With respect to a swimming pool contract, the final payment may be made at the completion of the final plastering phase of construction, provided that any installation or construction of equipment, decking, or fencing required by the contract is also completed. A failure by the contractor without lawful excuse to substantially commence work within 20 days of the approximate date specified in the contract when work will begin shall postpone the next succeeding payment to the contractor for that period of time equivalent to the time between when substantial commencement was to have occurred and when it did occur. The schedule of payments shall be stated in dollars and cents, and shall be specifically referenced to the amount of work or services to be performed and to any materials and equipment to be supplied. With respect to a contract that provides for a schedule of monthly payments to be made by the owner or tenant and for a schedule of payments to be disbursed to the contractor by a person or entity to whom the contractor intends to assign the right to receive the owner's or tenant's monthly payments, the payments referred to in this subdivision mean the payments to be disbursed by the assignee and not those payments to be made by the owner or tenant.

(f) A statement that, upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for the home improvement or swimming pool a full and unconditional release from any claim or mechanic's lien pursuant to Section 3114

of the Civil Code for that portion of the work for which payment has been made.

(g) The requirements set forth in subdivisions (d), (e), and (f) do not apply when the contract provides for the contractor to furnish a performance and payment bond, lien and completion bond, bond equivalent, or joint control approved by the registrar covering full performance and completion of the contract and the bonds or joint control is or are furnished by the contractor, or when the parties agree for full payment to be made upon or for a schedule of payments to commence after satisfactory completion of the project. The contract shall contain, in close proximity to the signatures of the owner and contractor, a notice in at least 10-point type stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

(h) No extra or change-order work may be required to be performed without prior written authorization of the person contracting for the construction of the home improvement or swimming pool. No change-order is enforceable against the person contracting for home improvement work or swimming pool construction unless it clearly sets forth the scope of work encompassed by the change-order and the price to be charged for the changes. Any change-order forms for changes or extra work shall be incorporated in, and become a part of, the contract. Failure to comply with the requirements of this subdivision does not preclude the recovery of compensation for work performed based upon quasi-contract, quantum meruit, restitution, or other similar legal or equitable remedies designed to prevent unjust enrichment.

(i) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with subdivision (e).

(j) The language of the notice required pursuant to Section 7018.5.

(k) What constitutes substantial commencement of work pursuant to the contract.

(*l*) A notice that failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of the Contractors' State License Law.

(m) If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

A failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of this section.

This section does not prohibit the parties to a home improvement contract from agreeing to a contract or account subject to Chapter

1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

The writing may also contain other matters agreed to by the parties to the contract.

The writing shall be legible and shall be in a form that clearly describes any other document that is to be incorporated into the contract. Before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor.

For purposes of this section, the board shall, by regulation, determine what constitutes "without lawful excuse."

The provisions of this section are not exclusive and do not relieve the contractor or any contract subject to it from compliance with all other applicable provisions of law.

A violation of this section by a licensee, or a person subject to be licensed, under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(n) Any person who violates this section as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars ($500) nor more than twenty-five thousand dollars ($25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

(o) (1) An indictment or information against a person who is not licensed, but who is required to be licensed under this chapter, shall be brought, or a criminal complaint filed, for a violation of this section within four years from the date the buyer signs the contract.

(2) An indictment or information against a person who is licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section within one year from the date the buyer signs the contract.

(3) The limitations on actions in this subdivision shall not apply to any administrative action filed against a licensed contractor.

SEC. 4.1. Section 8698 of the Business and Professions Code is amended to read:

8698. The director of the Department of Pesticide Regulation shall be designated by the board as its agent for the purposes of

carrying out Section 8698.1. The Los Angeles County Agricultural Commissioner or the Orange County Agricultural Commissioner, or both, may contract with the director to perform increased structural fumigation, inspection, training, and enforcement activities. These activities shall be funded by the moneys collected pursuant to this chapter.

SEC. 4.2. Section 8698.1 of the Business and Professions Code is amended to read:

8698.1. (a) If the county has contracted pursuant to Section 8698, any person who performs a structural fumigation in Los Angeles County or Orange County shall pay to the county agricultural commissioner a fee of five dollars ($5) for each treatment conducted at a specific building or structure.

(b) The fees shall be submitted by the 10th day of the month following the month in which the treatment was performed. The fees shall be accompanied by a copy of a monthly pesticide use report showing the addresses, including the department number if applicable, of all structural fumigations. The report shall be in a form required by the director, identify the name and address of the person or company performing the fumigation, and include any other information requested by the director.

SEC. 4.3. Section 8698.5 of the Business and Professions Code is amended to read:

8698.5. Any funds collected pursuant to this chapter shall be paid to the county and used for the sole purposes of funding enforcement and training activities directly related to the structural fumigation project created pursuant to Section 8698.

SEC. 4.4. Section 8698.6 of the Business and Professions Code is amended to read:

8698.6. This chapter shall remain in effect only until July 1, 2003, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 2003, deletes or extends that date.

SEC. 5. Section 3260.1 of the Civil Code is amended to read:

3260.1. (a) This section is applicable with respect to all contracts entered into on or after January 1, 1992, relating to the construction of any private work of improvement.

(b) Except as otherwise agreed in writing, the owner shall pay to the contractor, within 30 days following receipt of a demand for payment in accordance with the contract, any progress payment due thereunder as to which there is no good faith dispute between the parties. In the event of a dispute between the owner and the contractor, the owner may withhold from the progress payment an amount not to exceed 150 percent of the disputed amount. If any amount is wrongfully withheld in violation of this subdivision, the contractor shall be entitled to the penalty specified in subdivision (g) of Section 3260.

(c) Nothing in this section shall be deemed to supersede any requirement of Section 3260 respecting the withholding of retention proceeds.

SEC. 6. Section 116.220 of the Code of Civil Procedure is amended to read:

116.220. (a) The small claims court shall have jurisdiction in the following actions:

(1) Except as provided in subdivisions (c), (e), and (f), for recovery of money, if the amount of the demand does not exceed five thousand dollars ($5,000).

(2) Except as provided in subdivisions (c), (e), and (f), to enforce payment of delinquent unsecured personal property taxes in an amount not to exceed five thousand dollars ($5,000), if the legality of the tax is not contested by the defendant.

(3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of the Civil Code if the amount of the demand does not exceed five thousand dollars ($5,000).

(4) To confirm, correct, or vacate a fee arbitration award not exceeding five thousand dollars ($5,000) between an attorney and client that is binding or has become binding, or to conduct a hearing de novo between an attorney and client after nonbinding arbitration of a fee dispute involving no more than five thousand dollars ($5,000) in controversy, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code.

(b) In any action seeking relief authorized by subdivision (a), the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance, in lieu of, or in addition to, money damages. The court may issue a conditional judgment. The court shall retain jurisdiction until full payment and performance of any judgment or order.

(c) Notwithstanding subdivision (a), the small claims court shall have jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed (1) two thousand five hundred dollars ($2,500), or (2) on and after January 1, 2000, four thousand dollars ($4,000), if the defendant guarantor charges a fee for its guarantor or surety services or the defendant guarantor is the Registrar of the Contractors' State License Board.

(d) In any case in which the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be waived, but any waiver shall not become operative until judgment.

(e) Notwithstanding subdivision (a), in any action filed by a plaintiff incarcerated in a Department of Corrections facility or a Youth Authority facility, the small claims court shall have jurisdiction over a defendant only if the plaintiff has alleged in the complaint that he or she has exhausted his or her administrative remedies against that department, including compliance with Sections 905.2 and 905.4 of the Government Code. The final administrative adjudication or

determination of the plaintiff's administrative claim by the department may be attached to the complaint at the time of filing in lieu of that allegation.

(f) In any action governed by subdivision (e), if the plaintiff fails to provide proof of compliance with the requirements of subdivision (e) at the time of trial, the judicial officer shall, at his or her discretion, either dismiss the action or continue the action to give the plaintiff an opportunity to provide such proof.

(g) For purposes of this section, "department" includes an employee of a department against whom a claim has been filed under this chapter arising out of his or her duties as an employee of that department.

SEC. 7. Section 19825 of the Health and Safety Code is amended to read:

19825. (a) Every city or county that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall, in addition to any other requirements, require the following declarations in substantially the following form upon the issuance of any building permit:

BUILDING PROJECT IDENTIFICATION

Applicant's Mailing Address _____

_____

Address of Building _____

_____

Owner's Name if Known _____

Telephone No. _____

Contractor's Name _____

Contractor's Mailing Address _____

_____

Lic. No. _____

Architect or Engineer _____

Architect's or Engineer's Address _____

_____

Lic. No. _____

In addition the city or county may require that there be included, in the building project identification portion of a building permit, the following:

Assessor's Parcel Number* _____

Permit Date _____

Permit Number _____
Description of Work _____
Building Permit Valuation _____

*To be entered by issuing agency.

LICENSED CONTRACTOR'S DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class _____ Lic. No. _____
Date _____ Contractor _____

OWNER–BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractors' State License Law for the following reason (Sec. 7031.5, Business and Professions Code: Any city or county that requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars ($500).):

☐ I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who does the work himself or herself or through his or her own employees, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.).

☐ I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who contracts for the projects with a contractor(s) licensed pursuant to the Contractors' State License Law.).

☐ I am exempt under Sec. _____, B.& P.C. for this reason

_____

Date _____ Owner _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

____ I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

____ I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

(This section need not be completed if the permit is for one hundred dollars ($100) or less).

____ I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date: _____ Applicant: _____

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS ($100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name _____
Lender's Address _____

I certify that I have read this application and state that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above-mentioned property for inspection purposes.

_____ _____
Signature of Applicant or Agent Date

(b) The Contractors' State License Board shall provide semiannually, upon the request of city, county, and city and county building departments, a list of all contractors that did not secure payment of compensation in accordance with Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the Labor Code during any period for which workers were employed during the preceeding six months.

SEC. 8. Section 3800 of the Labor Code is amended to read:

3800. (a) Every county or city which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall require that each applicant for the permit sign a declaration under penalty of perjury verifying workers' compensation coverage or exemption from coverage, as required by Section 19825 of the Health and Safety Code.

(b) At the time of permit issuance, contractors shall show their valid workers' compensation insurance certificate, or the city or county may verify the workers' compensation coverage by electronic means.

CHAPTER 983

An act to amend Sections 101.1, 6787, 6799, 7003, 7215.6, 8016, 8024.2, 8024.3, 8024.4, 8024.6, 8025, 8031, 8516, 8516.1, 8518, 8519.5, 8556, 8617, 8652, 8656, 8662, 8674, 8674.5, 8698, 8698.1, 8698.5, 8698.6, 8780, 8792, 8805, 9884, 22250, 22251, 22253, 22254, and 22255 of, to add Sections 6762.5, 7426.5, and 8747.5 to, and to repeal Sections 7343, 8614, and 8615 of, the Business and Professions Code, and to amend Section 803 of the Penal Code, relating to licensed professionals, and making an appropriation therefor.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 101.1 of the Business and Professions Code is amended to read:

101.1. (a) It is the intent of the Legislature that all existing and proposed consumer-related boards or categories of licensed professionals be subject to a review every four years to evaluate and determine whether each board has demonstrated a public need for the continued existence of that board in accordance with enumerated factors and standards as set forth in Division 1.2 (commencing with Section 473).

(b) (1) In the event that any board, as defined in Section 477, becomes inoperative or is repealed in accordance with the act that added this section, or by subsequent acts, the Department of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of that board and its executive officer.

(2) Any provision of existing law that provides for the appointment of board members and specifies the qualifications and tenure of board members shall not be implemented and shall have no force or effect while that board is inoperative or repealed. Every reference to the inoperative or repealed board, as defined in Section 477, shall be deemed to be a reference to the department.

(3) Notwithstanding Section 107, any provision of law authorizing the appointment of an executive officer by a board subject to the review described in Division 1.2 (commencing with Section 473), or prescribing his or her duties, shall not be implemented and shall have no force or effect while the applicable board is inoperative or repealed. Any reference to the executive officer of an inoperative or repealed board shall be deemed to be a reference to the director or his or her designee.

(c) It is the intent of the Legislature that subsequent legislation to extend or repeal the inoperative date for any board shall be a separate bill for that purpose.

SEC. 2. Section 6762.5 is added to the Business and Professions Code, to read:

6762.5. (a) The board shall issue, upon application and payment of the fee established by Section 6799, a retired license (registration), to an engineer who has been licensed by the board for a minimum of 5 years within California and a minimum of 20 years within the United States or territory of the United States, and who holds a license that is not suspended, revoked, or otherwise disciplined, or subject to pending discipline under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active engineer's license is required. An engineer holding a retired license shall be permitted to use the titles "retired professional engineer," "professional engineer, retired," or either of those titles with the licensee's branch

designation inserted for the word "professional" for example, "retired civil engineer" or "civil engineer, retired."

(c) The holder of a retired license shall not be required to renew that license.

(d) In order for the holder of a retired license issued pursuant to this section to restore his or her license to active status, he or she shall pass the second division examination that is required for initial licensure with the board.

SEC. 3. Section 6787 of the Business and Professions Code is amended to read:

6787. Every person is guilty of a misdemeanor and for each offense of which he or she is convicted is punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment not to exceed three months, or by both that fine and imprisonment:

(a) Who, unless he or she is exempt from registration under this chapter, practices or offers to practice civil, electrical, or mechanical engineering in this state according to the provisions of this chapter without legal authorization.

(b) Who presents or attempts to file as his or her own the certificate of registration of another.

(c) Who gives false evidence of any kind to the board, or to any member thereof, in obtaining a certificate of registration.

(d) Who impersonates or uses the seal of a licensed professional engineer.

(e) Who uses an expired or revoked certificate of registration.

(f) Who shall represent himself or herself as, or use the title of, registered civil, electrical, or mechanical engineer, or any other title whereby such person could be considered as practicing or offering to practice civil, electrical, or mechanical engineering in any of its branches, unless he or she is correspondingly qualified by registration as a civil, electrical, or mechanical engineer under this chapter.

(g) Who, unless appropriately registered, manages, or conducts as manager, proprietor, or agent, any place of business from which civil, electrical, or mechanical engineering work is solicited, performed, or practiced.

(h) Who uses the title, or any combination of that title, of "professional engineer," "licensed engineer," "registered engineer," or the branch titles specified in Section 6732, or the authority titles specified in Section 6763, or "engineer-in-training," or who makes use of any abbreviation of that title which might lead to the belief that he or she is a registered engineer, without being registered as required by this chapter.

(i) Who uses the title "consulting engineer" without being registered as required by this chapter or without being authorized to use that title pursuant to legislation enacted at the 1963, 1965 or 1968 Regular Session.

(j) Who violates any provision of this chapter.

SEC. 4. Section 6799 of the Business and Professions Code is amended to read:

6799. The amount of the fees prescribed by this chapter shall be fixed by the board in accordance with the following schedule:

(a) The fee for filing each application for registration as a professional engineer and each application for authority level designation at not more than one hundred seventy-five dollars ($175), and for each application for certification as an engineer-in-training at not more than sixty dollars ($60).

(b) The temporary registration fee for a professional engineer at not more than 25 percent of the application fee in effect on the date of application.

(c) The renewal fee for each branch of professional engineering in which registration is held, and the renewal fee for each authority level designation held, at no more than the professional engineer application fee currently in effect.

(d) The fee for a retired license at not more than 50 percent of the professional engineer application fee in effect on the date of application.

(e) The delinquency fee at not more than 50 percent of the renewal fee in effect on the date of reinstatement.

(f) The board shall establish by regulation an appeal fee for examination. The regulation shall include provisions for an applicant to be reimbursed the appeal fee if the appeal results in passage of examination. The fee charged shall be no more than the costs incurred by the board.

(g) All other document fees are to be set by the board by rule.

Applicants wishing to be examined in more than one branch of engineering shall be required to pay the additional fee for each examination after the first.

SEC. 5. Section 7003 of the Business and Professions Code is amended to read:

7003. Except as otherwise provided, an appointment to fill a vacancy caused by the expiration of the term of office shall be for a term of four years and shall be filled, except for a vacancy in the term of a public member, by a member from the same branch of the contracting business as was the branch of the member whose term has expired. A vacancy in the term of a public member shall be filled by another public member. Each member shall hold office until the appointment and qualification of his or her successor or until the office is deemed to be vacant pursuant to Section 1774 of the Government Code, whichever first occurs.

Vacancies occurring in the membership of the board for any cause shall be filled by appointment for the balance of the unexpired term.

No person shall serve as a member of the board for more than two consecutive terms.

The Governor shall appoint five of the public members, including the local building official, and the six members qualified as provided

in Section 7002. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

SEC. 6. Section 7215.6 of the Business and Professions Code is amended to read:

7215.6. (a) In order to provide a procedure for the resolution of disputes between guide dog users and guide dog schools relating to the continued physical custody and use of a guide dog, in all cases except those in which the dog user is the unconditional legal owner of the dog, the following arbitration procedure shall be established as a pilot project.

(b) This procedure establishes an arbitration panel for the settlement of disputes between a guide dog user and a licensed guide dog school regarding the continued use of a guide dog by the user in all cases except those in which the dog user is the unconditional legal owner of the dog. The disputes which may be subject to this procedure concern differences between the user and school over whether or not a guide dog should continue to be used, differences between the user and school regarding the treatment of a dog by the user, and differences over whether or not a user should continue to have custody of a dog pending investigation of charges of abuse. It specifically does not address issues such as admissions to schools, training practices, or other issues relating to school standards. The board and its representative are not parties to any dispute described in this section.

(c) The licensed guide dog schools in California and the board shall provide to guide dog users graduating from guide dog programs in these schools a new avenue for the resolution of disputes that involve continued use of a guide dog, or the actual physical custody of a guide dog. Guide dog users who are dissatisfied with decisions of schools regarding continued use of guide dogs may appeal to the board to convene an arbitration panel composed of all of the following:

(1) One person designated by the guide dog user.

(2) One person designated by the licensed guide dog school.

(3) A representative of the board who shall coordinate the activities of the panel and serve as chair.

(d) If the guide dog user or guide dog school wishes to utilize the arbitration panel, this must be stated in writing to the board. The findings and decision of the arbitration panel shall be final and binding. By voluntarily agreeing to having a dispute resolved by the arbitration panel and subject to its procedures, each party to the dispute shall waive any right for subsequent judicial review.

(e) A licensed guide dog school that fails to comply with any provision of this section shall automatically be subject to a penalty of two hundred fifty dollars ($250) per day for each day in which a violation occurs. The penalty shall be paid to the board. The license of a guide dog school shall not be renewed until all penalties have been paid.

The fine shall be assessed without advance hearing, but the licensee may apply to the board for a hearing on the issue of whether the fine should be modified or set aside. This application shall be in writing and shall be received by the board within 30 days after service of notice of the fine. Upon receipt of this written request, the board shall set the matter for hearing within 60 days.

(f) As a general rule, custody of the guide dog shall remain with the guide dog user pending a resolution by the arbitration panel. In circumstances where the immediate health and safety of the guide dog user or guide dog is threatened, the licensed school may take custody of the dog at once. However, if the dog is removed from the user's custody without the user's concurrence, the school shall provide to the board the evidence that caused this action to be taken at once and without fail; and within five calendar days a special committee of two members of the board shall make a determination regarding custody of the dog pending hearing by the arbitration panel.

(g) The arbitration panel shall decide the best means to determine final resolution in each case. This shall include, but is not limited to, a hearing of the matter before the arbitration panel at the request of either party to the dispute, an opportunity for each party in the dispute to make presentations before the arbitration panel, examination of the written record, or any other inquiry as will best reveal the facts of the disputes. In any case, the panel shall make its findings and complete its examination within 45 calendar days of the date of filing the request for arbitration, and a decision shall be rendered within 10 calendar days of the examination.

All arbitration hearings shall be held at sites convenient to the parties and with a view to minimizing costs. Each party to the arbitration shall bear its own costs, except that the arbitration panel, by unanimous agreement, may modify this arrangement.

(h) The board may study the effectiveness of the arbitration panel pilot project in expediting resolution and reducing conflict in disputes between guide dog users and guide dog schools and may share its findings with the Legislature upon request.

(i) This section shall cease to be operative on July 1, 2002, and as of January 1, 2003, is repealed, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date.

SEC. 7. Section 7343 of the Business and Professions Code is repealed.

SEC. 8. Section 7426.5 is added to the Business and Professions Code, to read:

7426.5. The board may, by regulation, divide the fees payable under this chapter relating to licenses into separate categories based upon processing functions, such as application review, examination administration, or license issuance, provided that the combined fees for those processing functions do not exceed the maximum amount prescribed by the license category.

The board may, by regulation, establish procedures whereby some or all of a fee submitted in connection with an application for licensure would be forfeited by an applicant who has withdrawn his or her application, fails to appear for an examination, or is required to retake an examination.

SEC. 9. Section 8016 of the Business and Professions Code is amended to read:

8016. No person shall engage in the practice of shorthand reporting as defined in this chapter, unless that person is the holder of a certificate in full force and effect issued by the board. This section does not apply to a salaried, full-time employee of any department or agency of the state who is employed as a hearing reporter.

This section shall apply to all persons who are appointed, on and after January 1, 1983, to the position of official reporter or pro tempore official reporter of any court, as defined in the Government Code.

SEC. 9.2. Section 8024.2 of the Business and Professions Code is amended to read:

8024.2. (a) Except as otherwise provided in this article, a certificate which has expired may be renewed at any time within the period set forth in Section 8024.5 by doing all of the following:

(1) Apply for renewal on a form prescribed by the board.

(2) Pay the renewal fee prescribed by this chapter.

(3) Notify the board whether he or she has been convicted of any felony, any crime substantially related to the functions and duties of a court reporter, or any disciplinary action taken by any regulatory or licensing board in this or any other state, subsequent to the licensee's last renewal.

(b) If the certificate is not renewed within 30 days after its expiration, the certificate holder, as a condition precedent to renewal, shall also pay the delinquency fee set forth in Section 163.5. Renewal under this section shall be effective on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the certificate shall continue in effect through the date provided in Section 8024 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

The certificate shall not be renewed if the certificate holder has failed to pay monetary sanctions identified in subdivision (g) of Section 8025.

SEC. 9.3. Section 8024.3 of the Business and Professions Code is amended to read:

8024.3. A suspended certificate is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the holder of the certificate, while it remains suspended and until it is reinstated, to engage in the activity to which the certificate relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended.

The certificate shall not be renewed if the certificate holder has failed to pay monetary sanctions identified in subdivision (g) of Section 8025.

SEC. 9.4. Section 8024.4 of the Business and Professions Code is amended to read:

8024.4. A revoked certificate is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the holder of the certificate, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

The certificate shall not be renewed if the certificate holder has failed to pay monetary sanctions identified in subdivision (g) of Section 8025.

SEC. 9.5. Section 8024.6 of the Business and Professions Code is amended to read:

8024.6. (a) A certificate holder shall give written notice to the board at its office in Sacramento of a name change within 30 days after each change, giving both the old and the new names. A copy of the legal document affecting the name change, such as a court order or marriage certificate, shall be submitted with the notice.

(b) Each certificate holder shall notify the board in writing at its office in Sacramento of a change of address within 30 days after each change, giving both the old and the new addresses.

(c) A penalty as provided in this chapter shall be paid by each certificate holder who fails to notify the board within 30 days as specified in this section. Any certificate holder to whom this penalty applies who fails to pay that penalty shall not have their certificate renewed without payment of that penalty, and the board may take disciplinary action.

SEC. 9.6. Section 8025 of the Business and Professions Code is amended to read:

8025. A certificate issued under this chapter may be suspended or revoked, or certification may be denied, for one or more of the following causes:

(a) Conviction of a crime substantially related to the qualifications, functions, and duties of a certified shorthand reporter. The record of conviction, or a certified copy thereof, is conclusive evidence of the conviction.

(b) Failure to notify the board of a conviction described in subdivision (a), in accordance with Section 8024 or 8024.2.

(c) Fraud or misrepresentation resorted to in obtaining a certificate hereunder.

(d) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetency in practice, or unprofessional conduct in the practice of shorthand reporting.

"Unprofessional conduct" includes, but is not limited to, acts contrary to professional standards concerning confidentiality; impartiality; filing and retention of notes; notifications, availability, delivery, execution and certification of transcripts; and any provision of law substantially related to the duties of a certified shorthand reporter.

(e) Repeated unexcused failure, whether or not willful, to transcribe notes of cases pending on appeal and to file the transcripts of those notes within the time required by law or to transcribe or file notes of other proceedings within the time required by law or agreed by contract. Violation of this subdivision shall also be deemed an act endangering the public health, safety, or welfare within the meaning of Section 494.

(f) Loss or destruction of stenographic notes, whether on paper or electronic media, which prevents the production of a transcript due to negligence of the licensee.

(g) Failure to comply with, or to pay a monetary sanction imposed by, any court for failure to provide timely transcripts. The record of the court order, or a certified copy thereof, is conclusive evidence that the sanction was imposed.

(h) Violation of this chapter or the statutes, rules, and regulations pertaining to certified shorthand reporters.

SEC. 9.7. Section 8031 of the Business and Professions Code is amended to read:

8031. The amount of the fees required by this chapter is that fixed by the board in accordance with the following schedule:

(a) The fee for filing an application for each examination shall be no more than forty dollars ($40).

(b) The fee for examination and reexamination for the written or practical part of the examination shall be in an amount fixed by the board, which shall be equal to the actual cost of preparing, administering, grading, and analyzing the examination, but shall not exceed seventy-five dollars ($75) for each separate part, for each administration.

(c) The initial certificate fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued, except that, if the certificate will expire less than 180 days after its issuance, then the fee is 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued, or fifty dollars ($50), whichever is greater. The board may, by appropriate regulation, provide for the waiver or refund of the initial certificate fee where the certificate is issued less than 45 days before the date on which it will expire.

(d) By a resolution adopted by the board, a renewal fee may be established in such amounts and at such times as the board may deem appropriate to meet its operational expenses and funding responsibilities as set forth in this chapter. The renewal fee shall not

be more than one hundred twenty-five dollars ($125) nor less than ten dollars ($10) annually, with the following exception:

Any person who is employed full time by the State of California as a hearing reporter and who does not otherwise render shorthand reporting services for a fee shall be exempt from licensure while in state employment and shall not be subject to the renewal fee provisions of this subdivision until 30 days after leaving state employment. The renewal fee shall, in addition to the amount fixed by this subdivision, include any unpaid fees required by this section plus any delinquency fee.

(e) The duplicate certificate fee shall be no greater than ten dollars ($10).

(f) The penalty for failure to notify the board of a change of name or address as required by Section 8024.6 shall be no greater than fifty dollars ($50).

SEC. 10. Section 8516 of the Business and Professions Code is amended to read:

8516. (a) This section, and Section 8519, apply only to wood destroying pests or organisms, but do not apply to work conducted pursuant to Section 8516.1.

(b) No registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.

Every property inspected pursuant to subdivision (b) of Section 8516.1, or Section 8518, or subdivision (b) of this section shall be assessed a filing fee pursuant to Section 8674.

Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8516.1, Section 8518, or this section are grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars ($2,500).

A written inspection report conforming to this section and on a form approved by the board shall be prepared and delivered to the person requesting the inspection or to the person's designated agent within 10 business days of the inspection, except that an inspection report prepared for use by an attorney for litigation purposes is not required to be reported to the board. The report shall be delivered before work is commenced on any property. The registered company shall retain for three years all original inspection reports, filed notes, and activity forms.

Reports shall be made available for inspection and reproduction to the executive officer of the board or his or her duly authorized

representative during business hours. Original inspection reports or copies thereof shall be submitted to the board upon request within two business days. The following shall be set forth in the report:

(1) The date of the inspection and the name of the licensed field representative or operator making the inspection.

(2) The name and address of the person or firm ordering the report.

(3) The name and address of any person who is a party in interest.

(4) The address or location of the property.

(5) A general description of the building or premises inspected.

(6) A foundation diagram or sketch of the structure or structures or portions of the structure or structures inspected, indicating thereon the approximate location of any infested or infected areas evident, and the parts of the structure where conditions that would ordinarily subject those parts to attack by wood destroying pests or organisms exist.

(7) Information regarding the substructure, foundation walls and footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing that includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject to attack by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation or infection, such as earth-wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture conditions, evidence of roof leaks, and insufficient ventilation are to be reported.

(8) One of the following statements, as appropriate, printed in bold type:

(A) The exterior surface of the roof was not inspected. If you want the water tightness of the roof determined, you should contact a roofing contractor who is licensed by the Contractors' State License Board.

(B) The exterior surface of the roof was inspected to determine whether or not wood destroying pests or organisms are present.

(9) Indication or description of any areas that are inaccessible or not inspected with recommendation for further inspection if practicable. If, after the report has been made in compliance with this section, authority is given later to open inaccessible areas, a supplemental report on conditions in these areas shall be made.

(10) Recommendations for corrective measures.

(11) Information regarding the pesticide or pesticides to be used for their control as set forth in subdivision (a) of Section 8538.

(12) The inspection report shall clearly disclose that if requested by the person ordering the original report, a reinspection of the structure will be performed if an estimate or bid for making repairs was given with the original inspection report, or thereafter.

(13) The inspection report shall contain the following statement, printed in boldface type:

"NOTICE: Reports on this structure prepared by various registered companies should list the same findings (i.e. termite infestations, termite damage, fungus damage, etc.). However, recommendations to correct these findings may vary from company to company. You have a right to seek a second opinion from another company."

An estimate or bid for repairs shall be given separately allocating the costs to perform each and every recommendation for corrective measures as specified in subdivision (c) with the original inspection report if the person who ordered the original inspection report so requests, and if the registered company is regularly in the business of performing corrective measures.

If no estimate or bid was given with the original inspection report, or thereafter, then the registered company shall not be required to perform a reinspection.

A reinspection shall be an inspection of those items previously listed on an original report to determine if the recommendations have been completed. Each reinspection shall be reported on an original inspection report form and shall be labeled "Reinspection" in capital letters by rubber stamp or typewritten. Each reinspection shall also identify the original report by date and stamp numbers.

After four months from an original inspection, all inspections shall be original inspections and not reinspections.

Any reinspection shall be performed for not more than the price of the registered company's original inspection price and shall be completed within 10 working days after a reinspection has been ordered.

(c) At the time a report is ordered, the registered company or licensee shall inform the person or entity ordering the report, that a separated report is available pursuant to this subdivision. If a separated report is requested at the time the inspection report is ordered, the registered company or licensee shall separately identify on the report each recommendation for corrective measures as follows:

(1) The infestation or infection that is evident.

(2) The conditions that are present that are deemed likely to lead to infestation or infection.

If a registered company or licensee fails to inform as required by this subdivision and a dispute arises, or if any other dispute arises as to whether this subdivision has been complied with, a separated report shall be provided within 24 hours of the request but, in no event, later than the next business day, and at no additional cost.

(d) When a corrective condition is identified, either as paragraph (1) or (2) of subdivision (c), and the responsible party, as negotiated between the buyer and the seller, chooses not to correct those conditions, the registered company or licensee shall not be liable for damages resulting from a failure to correct those conditions or subject to any disciplinary action by the board. Nothing in this

subdivision, however, shall relieve a registered company or a licensee of any liability resulting from negligence, fraud, dishonest dealing, other violations pursuant to this chapter, or contractual obligations between the registered company or licensee and the responsible parties.

(e) The inspection report form prescribed by the board shall separately identify the infestation or infection that is evident and the conditions that are present that are deemed likely to lead to infestation or infection. If a separated form is requested, the form shall explain the infestation or infection that is evident and the conditions that are present that are deemed likely to lead to infestation or infection and the difference between those conditions. In no event, however, shall conditions deemed likely to lead to infestation or infection be characterized as actual "defects" or as actual "active" infestations or infections or in need of correction as a precondition to issuing a certification pursuant to Section 8519.

(f) The report and any contract entered into shall also state specifically when any guarantee for the work is made, and if so, the specific terms of the guarantee and the period of time for which the guarantee shall be in effect.

(g) Control service is defined as the regular reinspection of a property after a report has been made in compliance with this section and any corrections as have been agreed upon have been completed. Under a control service agreement a registered company shall refer to the original report and contract in a manner as to identify them clearly, and the report shall be assumed to be a true report of conditions as originally issued, except it may be modified after a control service inspection. A registered company is not required to issue a report as outlined in paragraphs (1) to (11), inclusive, of subdivision (b) after each control service inspection. If after control service inspection, no modification of the original report is made in writing, then it will be assumed that conditions are as originally reported. A control service contract shall state specifically the particular wood destroying pests or organisms and the portions of the buildings or structures covered by the contract.

(h) A registered company or licensee may enter into and maintain a control service agreement provided the following requirements are met:

(1) The control service agreement shall be in writing, signed by both parties, and shall specifically include the following:

(A) The wood destroying pests and organisms that could infest and infect the structure.

(B) The wood destroying pests and organisms covered by the control service agreement. Any wood destroying pest or organism that is not covered must be specifically listed.

(C) The type and manner of treatment to be used to correct the infestations or infections.

(D) The structures or buildings, or portions thereof, covered by the agreement, including a statement specifying whether the coverage for purposes of periodic inspections is limited or full. Any exclusions from those described in the original report must be specifically listed.

(E) A reference to the original inspection report and agreement.

(F) The frequency of the inspections to be provided, the fee to be charged for each renewal, and the duration of the agreement.

(G) Whether the fee includes structural repairs.

(H) If the services provided are guaranteed, and, if so, the terms of the guarantee.

(I) A statement that all corrections of infestations or infections covered by the control service agreement shall be completed within six months of discovery, unless otherwise agreed to in writing by both parties.

(2) Inspections made pursuant to a control service agreement shall be conducted by a Branch 3 licensee. Section 8506.1 does not modify this provision.

(3) A full inspection of the property covered by the control service agreement shall be conducted and a report filed pursuant to subdivision (b) at least once every three years from the date that the agreement was entered into, unless the consumer cancels the contract within three years from the date the agreement was entered into.

(4) A written report shall be required for the correction of any infestation or infection unless all of the following conditions are met:

(A) The infestation or infection has been previously reported.

(B) The infestation or infection is covered by the control service agreement.

(C) There is no additional charge for correcting the infestation or infection.

(D) Correction of the infestation or infection takes place within 45 days of its discovery.

(E) Correction of the infestation or infection does not include fumigation.

(5) All notice requirements pursuant to Section 8538 shall apply to all pesticide treatments conducted under control service agreements.

(6) For purposes of this section, "control service agreement" means any agreement, including extended warranties, to have a licensee conduct over a period of time regular inspections and other activities related to the control or eradication of wood destroying pests and organisms.

(i) All work recommended by a registered company, where an estimate or bid for making repairs was given with the original inspection report, or thereafter, shall be recorded on this report or a separate work agreement and shall specify a price for each recommendation. This information shall be provided to the person

requesting the inspection, and shall be retained by the registered company with the inspection report copy for three years.

SEC. 10.1. Section 8516.1 of the Business and Professions Code is amended to read:

8516.1. (a) This section applies only to work conducted by a wood roof cleaning and treatment registered company or licensee.

(b) No wood roof cleaning and treatment registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying organisms or nondecay fungi on a wood shake or shingle roof until an inspection has been made. All inspections performed by these registered companies or licensees shall be on properties that are not offered for sale, lease, or exchange, and shall be limited to the wood shakes or shingles on wood shake or shingle roofs and may only be performed for purposes of detecting the presence or absence of wood destroying organisms such as decay fungi on the wood shakes or shingles and resulting decay, or nondecay fungi such as mold, mildew, lichen, or moss on the wood shakes or shingles.

(c) The address of each property inspected or upon which work is completed shall be reported on a form approved by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.

Every property inspected pursuant to subdivision (b) of Section 8516, Section 8518, or subdivision (b) of this section shall be assessed a filing fee pursuant to Section 8674.

Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8516, Section 8518, or this section are grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars ($2,500).

A written inspection report conforming to this section and on a form approved by the board shall be prepared and delivered to the person requesting the inspection or to the person's designated agent within 10 business days of the inspection. The report shall be delivered before work is commenced on any property. All wood roof cleaning and treatment registered companies shall retain for three years all original inspection reports, field notes, and activity forms.

Reports shall be made available for inspection and reproduction to the executive officer of the board or his or her duly authorized representative during business hours. Original inspection reports or copies thereof shall be submitted to the board upon request within two business days.

The following items shall be set forth in the report:

(1) The date of the inspection and the name of the licensee making the inspection.

(2) The name and address of the person or firm ordering the report.

(3) The name and address of any person who is a party in interest.

(4) The address or location of the property.

(5) A general description of the roof covering inspected.

(6) A diagram or sketch of the roof inspected indicating thereon the type and approximate location of any infection of wood destroying organisms or nondecay fungi.

(7) Information regarding conditions usually deemed likely to lead to infection of wood destroying organisms and nondecay fungi.

(8) Recommendations for corrective measures.

(9) Information regarding the wood preservative to be used for control of the wood destroying organisms and nondecay fungi as set forth in subdivision (a) of Section 8538.

(10) A statement printed in 10-point boldface type, stating that the corrective measures will not improve the water tightness of the roof and if the person or entity who ordered the report wants the roof inspected for a determination of water tightness, that person or entity should contact a roofing contractor who is licensed by the Contractors' State License Board.

(11) For purposes of this section and Section 8516, "water tightness" means that at the time the inspection was performed the roof would not, under normal climatic conditions, leak.

(d) At the time the report is ordered, the registered company or licensee shall inform the person or entity ordering the report, that a separated report is available pursuant to this subdivision. If a separated report is requested at the time the inspection report is ordered, the registered company or licensee shall separately identify on the report each recommendation for corrective measures as follows:

(1) The infection that is evident.

(2) The conditions that are present that are deemed likely to lead to infection of wood destroying organisms such as decay fungus.

(3) The conditions that are present that are nondecay fungi such as mold, mildew, lichen, or moss.

If the registered company or licensee fails to comply with the requirements of this subdivision and a dispute arises, or if any dispute arises as to whether this subdivision has been complied with, a separate report shall be provided to the person or entity ordering the report within 24 hours of that request, but in no event later than the next business day, and at no additional cost.

(e) The report and any contract entered into shall also state specifically when any guarantee for the work is made, and if so, the specific terms of the guarantee and the period of time for which the guarantee shall take effect.

(f) All work recommended by the registered company, where an estimate or bid for making repairs was given with the original inspection report, or thereafter, shall be recorded on that report or a separate work agreement and shall specify a price for each recommendation. This information shall be provided to the person

requesting the inspection, and shall be retained by the registered company with the inspection report copy for two years.

(g) All wood roof cleaning and treatment registered companies shall possess a current roofing contractor's license issued by the Contractors' State License Board.

SEC. 10.2. Section 8518 of the Business and Professions Code is amended to read:

8518. When a registered company completes work under a contract, it shall prepare, on a form prescribed by the board, a notice of work completed and not completed, and shall furnish that notice to the owner of the property or the owner's agent within 10 working days after completing the work. The notice shall include a statement of the cost of the completed work and estimated cost of work not completed.

The address of each property inspected or upon which work was completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 working days after completed work.

Every property upon which work is completed shall be assessed a filing fee pursuant to Section 8674.

Failure of a registered company to report and file with the board the address of any property upon which work was completed pursuant to subdivision (b) of Section 8516, subdivision (b) of Section 8516.1, or Section 8518 are grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars ($2,500).

The registered company shall retain for three years all original notices of work completed, work not completed, and activity forms.

Notices of work completed and not completed shall be made available for inspection and reproduction to the executive officer of the board or his or her duly authorized representative during business hours. Original notices of work completed or not completed or copies thereof shall be submitted to the board upon request within two business days.

SEC. 10.3. Section 8519.5 of the Business and Professions Code is amended to read:

8519.5. (a) After an inspection report has been prepared by a Branch 3 registered company pursuant to Section 8516, which discloses a wood destroying pest that can be eradicated by fumigation, and the fumigation has been duly performed by a Branch 1 registered company, the Branch 1 registered company, on a company document that identifies the licensee performing the fumigation and the name and address of the registered company, shall issue the following certification: "This is to certify that the property located at _____ (address) was fumigated on _____ (date) for the extermination of _____ (target pest)." This certification shall be issued to the person ordering the fumigation and

to the registered company that prepared the inspection report within five working days after completing the fumigation.

(1) Where a consumer has authorized a Branch 3 registered company to subcontract the fumigation to a Branch 1 registered company, a copy of the certification shall accompany any reinspection report, notice of work completed pursuant to Section 8518, or any certification issued by the Branch 3 company.

(2) Where the consumer has elected to contract directly with a Branch 1 registered company to perform a fumigation, the distribution of any documents pertinent to the fumigation shall be the responsibility of the Branch 1 registered company.

(b) In the event of a failed fumigation performed by a Branch 1 registered company that has contracted directly with the consumer, the Branch 1 registered company shall do all of the following:

(1) Verify the need for a refumigation.

(2) Maintain with the original inspection report, on a company document, all of the following:

(A) The name of the current owner of the structure fumigated, the address of the structure, and the date of the failed fumigation.

(B) An explanation of the need for refumigation.

(C) The proposed date for the refumigation.

(3) Within five working days after the completion of the refumigation, the Branch 1 registered company, on a company document, shall file with the current owner, and the Branch 3 registered company whose report was used for the original fumigation, information regarding the completion of the refumigation, a new certification, and any warranty or guarantee.

SEC. 10.4. Section 8556 of the Business and Professions Code is amended to read:

8556. (a) Licensed contractors acting in their capacity as such, may remove and replace any structure or portions of a structure damaged by wood destroying pests or organisms if that work is incidental to other work being performed on the structure involved or if that work has been identified by a structural pest control inspection report. Licensed contractors acting in their capacity as such may apply wood preservatives directly to end cuts and drill holes of pressure treated wood, and to foundation wood as required by building codes, as well as to fencing and decking, by brush, dip, or spray method and need not obtain a license under this chapter for performance of that work, provided a disclosure in the following form is submitted to the customer in writing: "The application of a wood preservative is intended to prevent the establishment and flourishing of organisms which can deteriorate wood. If you suspect pest infestation or infection, contact a registered structural pest control company prior to the application of a wood preservative."

These exemptions do not authorize the performance of any other acts defined in Section 8505.

(b) A licensed contractor may contract for the performance of any soil treatment pest control work to eliminate, exterminate, control, or prevent infestations or infections of pests or organisms in the ground beneath or adjacent to any existing building or structure or in or upon any site upon which any building or structure is to be constructed, but the actual performance of any such work must be done by a registered structural pest control company.

SEC. 10.5. Section 8614 of the Business and Professions Code is repealed.

SEC. 10.6. Section 8615 of the Business and Professions Code is repealed.

SEC. 10.7. Section 8617 of the Business and Professions Code is amended to read:

8617. (a) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may suspend the right of a structural pest control licensee or registered company to work in a county for up to three working days or, for a licensee, registered company, or an unlicensed individual acting as a licensee, may levy an administrative fine up to one thousand dollars ($1,000) for each violation of this chapter, or any regulations adopted pursuant to this chapter, or Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing with Section 14101), or Chapter 7 (commencing with Section 15201) of Division 7 of the Food and Agricultural Code, or any regulations adopted pursuant to those chapters, relating to economic poisons. Fines collected shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund. Suspension may include all or part of the registered company's business within the county based on the nature of the violation, but shall, whenever possible, be restricted to that portion of a registered company's business in a county that was in violation.

(b) Before a suspension action is taken or a fine levied, the person charged with the violation shall be provided a written notice of the proposed action, including the nature of the violation and the amount of the proposed fine or suspension. The notice of proposed action shall inform the person charged with the violation that if he or she desires a hearing before the commissioner issuing the proposed action to contest the finding of a violation, that hearing shall be requested by written notice to the commissioner within 20 days of the date of issuance of the written notice of proposed action.

A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address.

If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and a right to present evidence on his or her

own behalf. If a hearing is not requested within the prescribed time, the commissioner may take the action proposed without a hearing.

(c) If the person upon whom the commissioner imposed a fine or suspension requested and appeared at a hearing before the commissioner, the person may appeal the commissioner's decision to the Disciplinary Review Committee and shall be subject to the procedures in Section 8662.

(d) If a suspension or fine is ordered, it may not take effect until 20 days after the date of the commissioner's decision if no appeal is filed. If an appeal pursuant to Section 8662 is filed, the commissioner's order shall be stayed until 20 days after the Disciplinary Review Committee has ruled on the appeal.

(e) Failure of a licensee or registered company to pay a fine within 30 days of the date of assessment or to comply with the order of suspension, unless the citation is being appealed, may result in disciplinary action being taken by the board.

Where a citation containing a fine is issued to a licensee and it is not contested or the time to appeal the citation has expired and the fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of that license. A license shall not be renewed without payment of the renewal fee and fine.

Where a citation containing a fine is issued to a registered company and it is not contested or the time to appeal the citation has expired and the fine is not paid, the board shall not sell to the registered company any inspection stamps, notice of completion stamps, or pesticide use stamps until the assessed fine has been paid.

(f) Once final action pursuant to this section is taken, no other administrative or civil action may be taken by any state governmental agency for the same violation. However, action taken pursuant to this section may be used by the board as evidence of prior discipline, and multiple local actions may be the basis for statewide disciplinary action by the board pursuant to Section 8620. A certified copy of the order of suspension or fine issued pursuant to this section or Section 8662 shall constitute conclusive evidence of the occurrence of the violation.

(g) Where the board is the party issuing the notice of proposed action to suspend or impose a fine pursuant to subdivision (a) of this section, "commissioner" as used in subdivisions (b), (c), and (d) includes the board's registrar.

SEC. 10.8. Section 8652 of the Business and Professions Code is amended to read:

8652. Failure of a registered company to make and keep all inspection reports, field notes, contracts, documents, notices of work completed, and records, other than financial records, for a period of not less than three years after completion of any work or operation for the control of structural pests or organisms, is a ground for disciplinary action. These records shall be made available to the

executive officer of the board or his or her duly authorized representative during business hours.

SEC. 10.85. Section 8656 of the Business and Professions Code is amended to read:

8656. In addition to the remedies provided for in Section 125.9, when the licensee who is a registered company has failed to pay the fine assessed pursuant to a citation within 30 days of the date of assessment, unless the citation is being appealed, the board shall not sell to the registered company any pesticide use stamps until the assessed fine has been paid.

SEC. 10.9. Section 8662 of the Business and Professions Code is amended to read:

8662. (a) Whenever the right of a structural pest control licensee or registered company to make pesticide applications is to be suspended or the licensee, registered company, or unlicensed individual is to be fined pursuant to Section 8617, and if the person upon whom the commissioner imposed a fine or suspension requested and appeared at a hearing before the commissioner in accordance with Section 8617, the party to be suspended or fined may appeal to the Disciplinary Review Committee by filing a written appeal with the committee within 10 days of receipt of the fine or suspension order.

(b) The following procedures shall apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her or its authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the committee.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, or at a later time prescribed by the committee or its designee, present the record of the hearing, including written evidence that was submitted at the hearing and written argument to the committee stating the grounds for affirming, modifying, or reversing the commissioner's decision.

(3) The committee or its designee may grant oral argument upon application made at the time written arguments are filed. If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given each party at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the committee.

(4) At any time written evidence is submitted to the committee, a copy shall be immediately provided to the other party.

(5) The committee shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2) that the committee may have received. If the committee finds substantial evidence in the record to support the commissioner's decision, the committee shall affirm the decision.

(6) The committee shall render its written decision within 45 days of the date of appeal or within 15 days from the date of oral arguments. If the committee does not reach a decision in the time required in this subdivision, the order issued pursuant to Section 8617 shall be null and void.

(7) On an appeal pursuant to this section, the committee may sustain, modify by reducing the time of suspension or the amount of the fine levied, or reverse the decision. A copy of the committee's decision shall be delivered or mailed to each party.

(8) Review of the decision of the committee may be sought by the licensee, registered company, or unlicensed individual pursuant to Section 1094.5 of the Code of Civil Procedure.

SEC. 10.10. Section 8674 of the Business and Professions Code is amended to read:

8674. The fees prescribed by this chapter are the following:

(a) A duplicate license fee of not more than two dollars ($2).

(b) A fee for filing a change of name of a licensee of not more than two dollars ($2).

(c) An operator's examination fee of not more than twenty-five dollars ($25).

(d) An operator's license fee of not more than one hundred fifty dollars ($150).

(e) An operator's license renewal fee of not more than one hundred fifty dollars ($150).

(f) A company registration fee of not more than one hundred twenty dollars ($120).

(g) A branch office registration fee of not more than sixty dollars ($60).

(h) A field representative's examination fee of not more than fifteen dollars ($15).

(i) A field representative's license fee of not more than forty-five dollars ($45).

(j) A field representative's license renewal fee of not more than forty-five dollars ($45).

(k) An applicator's examination fee of not more than fifteen dollars ($15).

(*l*) An applicator's license fee of not more than fifty dollars ($50).

(m) An applicator's license renewal fee of not more than fifty dollars ($50).

(n) An activity form fee, per property address, of not more than three dollars ($3).

(o) A fee for certifying a copy of an activity form of not more than three dollars ($3).

(p) A fee for filing a change of a registered company's name, principal office address, or branch office address, qualifying manager, or the names of a registered company's officers, or bond or insurance of not more than twenty-five dollars ($25) for each change.

(q) A fee for approval of continuing education providers of not more than fifty dollars ($50).

(r) A pesticide use report filing fee of not more than five dollars ($5) for each pesticide use report or combination of use reports representing a registered structural pest control company's total county pesticide use for the month.

(s) A fee for approval of continuing education courses of not more than twenty-five dollars ($25).

(t) (1) Any person who pays a fee pursuant to subdivision (s) shall, in addition, pay a fee of two dollars ($2) for each pesticide use stamp purchased from the board. Notwithstanding any other provision of law, the fee established pursuant to this subdivision shall be deposited with a bank or other depository approved by the Department of Finance and designated by the Research Advisory Panel or into the Structural Pest Control Research Fund which is hereby created and continuously appropriated to be used only for structural pest control research. If the Research Advisory Panel designates that the fees be deposited in an account other than the Structural Pest Control Research Fund, any moneys in the fund shall be transferred to the designated account.

(2) Prior to the deposit of any funds, the depository shall enter into an agreement with the Department of Consumer Affairs that includes, but is not limited to, all of the following requirements:

(A) The depository shall serve as custodian for the safekeeping of the funds.

(B) Funds deposited in the designated account shall be encumbered solely for the exclusive purpose of implementing and continuing the program for which they were collected.

(C) Funds deposited in the designated account shall be subject to an audit at least once every two years by an auditor selected by the Director of Consumer Affairs. A copy of the audit shall be provided to the director within 30 days of completion of the audit.

(D) The Department of Consumer Affairs shall be reimbursed for all expenses it incurs that are reasonably related to implementing and continuing the program for which the funds were collected in accordance with the agreement.

(E) A reserve in an amount sufficient to pay for costs arising from unanticipated occurrences associated with administration of the program shall be maintained in the designated account.

(3) A charge for administrative expenses of the board in an amount not to exceed 5 percent of the amount collected and deposited in the Structural Pest Control Research Fund may be assessed against the fund. The charge shall be limited to expenses directly related to the administration of the fund.

(4) The board shall, by regulation, establish a five-member research advisory panel including, but not limited to, representatives from each of the following: (1) the Structural Pest Control Board, (2) the structural pest control industry, (3) the Department of Pesticide

Regulation, and (4) the University of California. The panel shall solicit and review research proposals for recommendation to the board. The board shall distribute funds to qualified applicants, pursuant to the panel's recommendation, upon a two-thirds vote.

SEC. 10.11. Section 8674.5 of the Business and Professions Code is amended to read:

8674.5. (a) There is hereby created in the State Treasury a special fund known as the Structural Pest Control Device Fund. Each person who pays a license fee pursuant to this chapter, in addition, shall pay a fee of twenty-five cents ($0.25) for each property address reported. Funds derived from the additional twenty-five cents ($0.25) shall be deposited in the Structural Pest Control Device Fund.

(b) Five percent of the amount collected and deposited in the Structural Pest Control Device Fund shall be available to the board for administrative costs upon appropriation in the annual Budget Act. The balance in the fund is hereby continuously appropriated to the Department of Pesticide Regulation for costs incurred by that department pursuant to Chapter 7.5 (commencing with Section 15300) of Division 7 of the Food and Agricultural Code.

(c) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2002, deletes or extends that date.

SEC. 10.12. Section 8698 of the Business and Professions Code is amended to read:

8698. The Director of the Department of Pesticide Regulation shall be designated by the board as its agent for the purposes of carrying out Section 8698.1. The Los Angeles County Agricultural Commissioner or the Orange County Agricultural Commissioner, or both, may contract with the director to perform increased structural fumigation, inspection, and enforcement activities. These activities shall be funded by the moneys collected pursuant to this chapter.

SEC. 10.13. Section 8698.1 of the Business and Professions Code is amended to read:

8698.1. (a) If the county has contracted pursuant to Section 8698, any person who performs a structural fumigation in Los Angeles County or Orange County shall pay to the county agricultural commissioner a fee of five dollars ($5) for each treatment conducted at a specific building or structure.

(b) The fees shall be submitted by the 10th day of the month following the month in which the treatment was performed. The fees shall be accompanied by a copy of a monthly pesticide use report showing the addresses, including the department number if applicable, of all structural fumigations. The report shall be in a form required by the director, identify the name and address of the person or company performing the fumigation, and include any other information requested by the director.

SEC. 10.14. Section 8698.5 of the Business and Professions Code is amended to read:

8698.5. Any funds collected pursuant to this chapter shall be paid to the county and used for the sole purposes of funding enforcement and training activities directly related to the structural fumigation project created pursuant to Section 8698.

SEC. 10.15. Section 8698.6 of the Business and Professions Code is amended to read:

8698.6. This chapter shall remain in effect only until July 1, 2003, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 2003, deletes or extends that date.

SEC. 10.16. Section 8747.5 is added to the Business and Professions Code, to read:

8747.5. (a) The board shall issue, upon application and payment of the fee established by Section 8805, a retired license to a land surveyor who has been licensed by the board for a minimum of five years within California, and a minimum of 20 years within the United States or territories of the United States, and who holds a license that is not suspended, revoked, or otherwise disciplined, or subject to pending discipline under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active land surveyor's license is required. A land surveyor holding a retired license shall be permitted to use the titles "retired professional land surveyor" or "professional land surveyor, retired."

(c) The holder of a retired license shall not be required to renew that license.

(d) In order for the holder of a retired license issued pursuant to this section to restore his or her license to active status, he or she shall pass the examination that is required for initial licensure with the board.

SEC. 10.17. Section 8780 of the Business and Professions Code is amended to read:

8780. By a majority vote, the board may suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7 (commencing with Section 6700) of Division 3, whom it finds to be guilty of:

(a) Any fraud, deceit, misrepresentation, negligence, or incompetency in his or her practice of land surveying.

(b) Any fraud or deceit in obtaining his or her license.

(c) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying.

(d) Any conviction of a crime substantially related to the qualifications, functions and duties of a land surveyor. The record of the conviction shall be conclusive evidence thereof.

(e) Aiding or abetting any person in the violation of any provision of this chapter.

(f) A breach of contract in connection with the practice of land surveying.

SEC. 10.18. Section 8792 of the Business and Professions Code is amended to read:

8792. Every person is guilty of a misdemeanor:

(a) Who, unless he is exempt from licensing under this chapter, practices, or offers to practice, land surveying in this state without legal authorization.

(b) Who presents as his own, the license of another.

(c) Who attempts to file as his own any record of survey under the license of another.

(d) Who gives false evidence of any kind to the board, or to any member, in obtaining a license.

(e) Who impersonates or uses the seal of a professional land surveyor.

(f) Who uses an expired or revoked license.

(g) Who violates any provision of this chapter.

SEC. 10.19. Section 8805 of the Business and Professions Code is amended to read:

8805. The amount of the fees prescribed by this chapter shall be fixed by the board in accordance with the following schedule:

(a) The fee for filing each application for licensure as a land surveyor at not more than one hundred seventy-five dollars ($175), and for each application for certification as a land surveyor-in-training (LSIT) at not more than sixty dollars ($60).

(b) The temporary registration fee for a land surveyor at not more than 25 percent of the application fee in effect on the date of application.

(c) The renewal fee for a land surveyor at not more than the application fee.

(d) The fee for a retired license at not more than 50 percent of the professional land surveyor application fee in effect on the date of application.

(e) The delinquency fee at not more than 50 percent of the renewal fee in effect on the date of reinstatement.

(f) The board shall establish by regulation an appeal fee for examination. The regulation shall include provisions for an applicant to be reimbursed the appeal fee if the appeal results in passage of examination. The fee shall be no more than the costs incurred by the board.

(g) All other document fees are to be set by the board by rule.

SEC. 11. Section 9884 of the Business and Professions Code is amended to read:

9884. (a) An automotive repair dealer shall pay the fee required by this chapter for each place of business operated by the dealer in this state and shall register with the director upon forms prescribed

by the director. The forms shall contain sufficient information to identify the automotive repair dealer, including name, address of each location, a statement by the dealer that each location is in an area that, pursuant to local zoning ordinances, permits the operation of a facility for the repair of motor vehicles, the dealer's retail seller's permit number, if a permit is required under the Sales and Use Tax Law (Part 1 (commencing with Section 6001), Division 2, Revenue and Taxation Code), and other identifying data that are prescribed by the director. If the business is to be carried on under a fictitious name, the fictitious name shall be stated. To the extent prescribed by the director, an automotive repair dealer shall identify the owners, directors, officers, partners, members, trustees, managers, and any other persons who directly or indirectly control or conduct the business. The forms shall include a statement signed by the dealer under penalty of perjury that the information provided is true.

(b) A state agency is not authorized or required by this section to enforce a city, county, regional, air pollution control district, or air quality management district rule or regulation regarding the site or operation of a facility that repairs motor vehicles.

SEC. 12. Section 22250 of the Business and Professions Code is amended to read:

22250. (a) A tax preparer shall maintain a bond issued by a surety company admitted to do business in this state for each individual preparing tax returns for another person. The principal sum of the bond shall be five thousand dollars ($5,000). A tax preparer subject to this section shall provide to the surety company proof that the individual is at least 18 years of age before a surety bond may be issued.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person or persons damaged by any fraud, dishonesty, misstatement, misrepresentation, deceit, or any unlawful acts or omissions by the tax preparer, or the tax preparers employed or associated with it to provide tax preparation services.

(c) The tax preparer filing the bond shall identify all tax preparers employed or associated with the tax preparer and shall provide for each employee or associate the evidence required by subdivision (a) to the surety company. A tax preparer employed or associated with a tax preparer shall be covered by the bond of the tax preparer with which he or she is employed or associated. However, in no event shall the total bond required for any single tax preparer and the tax preparers employed or associated with it be required to exceed one hundred twenty-five thousand dollars ($125,000). The aggregate liability of the surety to any and all persons regardless of the number of claims against the bond or the number of years the bond remains in force shall not exceed five thousand dollars ($5,000) for any one tax preparer. Any revision of the bond amount shall not be cumulative. The liability of the surety on the bond shall not include payment of

any civil penalties, fines, attorneys' fees, or any other cost provided by statute or regulation.

(d) The tax preparer shall file an amendment to the bond within 30 days of a change in information contained in the bond, including a change in the tax preparers employed or associated with the tax preparer.

(e) (1) A tax preparer may not conduct business without having a current surety bond in the amount prescribed by this section.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to the tax preparer and the California Tax Education Council, identifying the bond and the date of cancellation or termination.

(3) If a tax preparer fails to obtain a new bond by the effective date of the cancellation or termination of the former bond, the tax preparer shall cease to conduct business until that time as a new surety bond is obtained.

(f) Notwithstanding Section 995.710 of the Code of Civil Procedure, a tax preparer may not make a deposit in lieu of bond.

(g) A tax preparer shall furnish evidence of the bond required by this section upon the request of any state, federal agency or any law enforcement agency or the California Tax Education Council.

SEC. 13. Section 22251 of the Business and Professions Code is amended to read:

22251. For the purposes of this chapter, the following words have the following meanings:

(a) (1) Except as otherwise provided in paragraph (2), "tax preparer" includes:

(A) A person who, for a fee, assists with or prepares tax returns for another person or who assumes final responsibility for completed work on a return on which preliminary work has been done by another person, or who holds himself or herself out as offering those services. A person engaged in that activity shall be deemed to be a separate person for the purposes of this chapter, irrespective of affiliation with, or employment by, another tax preparer.

(B) A corporation, partnership, association, or other entity that has associated with it persons not exempted under Section 22258, which persons shall have as part of their responsibilities the preparation of data and ultimate signatory authority on tax returns or that holds itself out as offering those services or having that authority.

(2) Notwithstanding paragraph (1), "tax preparer" does not include an employee who, as part of the regular clerical duties of his or her employment, prepares his or her employer's income, sales, or payroll tax returns.

(b) "Tax return" means a return, declaration, statement, refund claim, or other document required to be made or filed in connection

with state or federal income taxes or state bank and corporation franchise taxes.

(c) An "approved curriculum provider," for purposes of basic instruction as described in subdivision (a) of Section 22255, and continuing education as described in subdivision (b) of Section 22255, is one who has been approved by the council as defined in subdivision (d), or by the Bureau for Private Postsecondary and Vocational Education under Chapter 7 (commencing with Section 94700) of Part 59 of Division 10 of the Education Code. A curriculum provider who is approved by the tax education council is exempt from Chapter 7 (commencing with Section 94700) of Part 59 of Division 10 of the Education Code.

(d) "Council" means the California Tax Education Council which is a single organization made up of not more than one representative from each professional society, association, or other entity operating as a California nonprofit corporation which chooses to participate in the council and which represents tax preparers, enrolled agents, attorneys, or certified public accountants with a membership of at least 200 for the last three years, and not more than one representative from each for-profit tax preparation corporation which chooses to participate in the council and which has at least 200 employees and has been operating in California for the last three years.

SEC. 14. Section 22253 of the Business and Professions Code is amended to read:

22253. It is a violation of this chapter for a tax preparer to do any of the following:

(a) Make, or authorize the making of, any statement or representation, oral or written or recorded by any means, which is intended to induce persons to use the tax preparation service of the tax preparer, which statement or representation is fraudulent, untrue, or misleading.

(b) Obtain the signature of a customer to a tax return or authorizing document which contains blank spaces to be filled in after it has been signed.

(c) Fail or refuse to give a customer, for his or her own records, a copy of any document requiring the customer's signature, within a reasonable time after the customer signs such document.

(d) Fail to maintain a copy of any tax return prepared for a customer for four years from the date of completion or the due date of the return, whichever is later.

(e) Engage in advertising practices which are fraudulent, untrue, or misleading, including, but not limited to, assertions that the bond required by Section 22250 in any way implies licensure or endorsement of a tax preparer by the State of California.

(f) Violate Section 17530.5.

(g) Violate Section 7216 of Title 26 of the United States Code.

(h) Fail to sign a customer's tax return when payment for services rendered has been made.

(i) Fail to return, upon the demand by or on behalf of a customer, records or other data provided to the tax preparer by the customer.

(j) Knowingly give false or misleading information to the consumer pursuant to Section 22252, or give false or misleading information to the surety company pursuant to subdivision (a) of Section 22250, or give false or misleading information to the California Tax Education Council pursuant to Section 22255.

SEC. 15. Section 22254 of the Business and Professions Code is amended to read:

22254. A provider of tax preparer education for tax preparers shall meet standards and procedures as approved by the council, or by the Bureau for Private Postsecondary and Vocational Education. The council shall either approve or decline to approve providers of tax preparer education within 120 days of receiving a request for approval. If approval is not declined within 120 days, the provider shall be deemed approved. A listing of those providers approved by the council shall be made available to tax preparers upon request.

SEC. 16. Section 22255 of the Business and Professions Code is amended to read:

22255. (a) The council shall issue a "certificate of completion" to the tax preparer when the tax preparer demonstrates that he or she has (1) completed not less than 60 hours of instruction in basic personal income tax law, theory, and practice by an approved curriculum provider within the previous 18 months; and (2) provides evidence of compliance with the bonding requirement of Section 22250, including the name of the surety company, the bond number, and the bond expiration date.

(b) A tax preparer shall complete on an annual basis not less than 20 hours of continuing education, including 12 hours in federal taxation, four hours in California taxation and an additional four hours in either federal or California taxation from an approved curriculum provider. The council shall issue annually a "statement of compliance" when the tax preparer demonstrates that he or she has (1) completed the required 20 hours of continuing education, and (2) provides evidence of compliance with the bonding requirement of Section 22250, including the name of the surety company, the bond number, and the bond expiration date.

(c) An individual who possesses a minimum of two recent years experience in the preparation of personal income tax returns may petition the council to review the experience and determine if it is the equivalent of the required qualifying education. The council may provide that individual with a "certificate of completion" if it is determined that the experience is the equivalent of the required hours. Tax preparation performed in situations that violate this chapter, by an individual who is neither registered nor exempted,

may not be used toward the qualifying experience needed for registration as a tax preparer.

SEC. 17. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, or 134.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section

2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a "responsible adult" or "agency" means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in either Section 800 or 801.

(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1990, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is or was filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion

deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B) (i) If the victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, including any review proceeding, shall not be binding upon refiling.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that clearly and convincingly corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B) (i) If the victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, by any trial court or any intermediate appellate court, shall not be binding upon refiling.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government

Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 984

An act to amend Section 827 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a juvenile case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of

the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, which pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical, or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (J), inclusive, of paragraph (1) and is entitled

to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, and other forms of delinquency.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall

expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal may disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school

records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

SEC. 2. This act shall be known and may be cited as the Lance Helms Law of Confidentiality.

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 985

An act to add Sections 3027.5 and 3201 to the Family Code, and to amend Section 827 of the Welfare and Institutions Code, relating to child custody.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 3027.5 is added to the Family Code, to read:

3027.5. (a) No parent shall be placed on supervised visitation, or be denied custody of or visitation with his or her child, and no custody or visitation rights shall be limited, solely because the parent (1) lawfully reported suspected sexual abuse of the child, (2) otherwise acted lawfully, based on a reasonable belief, to determine if his or her child was the victim of sexual abuse, or (3) sought treatment for the child from a licensed mental health professional for suspected sexual abuse.

(b) The court may order supervised visitation or limit a parent's custody or visitation if the court finds substantial evidence that the parent, with the intent to interfere with the other parent's lawful contact with the child, made a report of child sexual abuse, during a child custody proceeding or at any other time, that he or she knew was false at the time it was made. Any limitation of custody or visitation, including an order for supervised visitation, pursuant to this subdivision, or any statute regarding the making of a false child abuse report, shall be imposed only after the court has determined that the limitation is necessary to protect the health, safety, and welfare of the child, and the court has considered the state's policy of assuring that children have frequent and continuing contact with both parents as declared in subdivision (b) of Section 3020.

SEC. 2. Section 3201 is added to the Family Code, to read:

3201. Any supervised visitation maintained or imposed by the court shall be administered in accordance with Section 26.2 of the California Standards of Judicial Administration recommended by the Judicial Council.

SEC. 3. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives

of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Any records or reports relating to a matter within the jurisdiction of the juvenile court prepared by or released by the court, a probation department, or the county department of social services, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, any of those records or reports, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be made attachments to any other documents without the prior approval of the presiding judge of the juvenile court, unless they are used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law

enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal may disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the

court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

SEC. 3.1. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a juvenile case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, which pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical, or emotional well-being of another child who

is directly or indirectly connected to the juvenile case that is the subject of the petition.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (J), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, and other forms of delinquency and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal may disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

SEC. 3.2. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Any records or reports relating to a matter within the jurisdiction of the juvenile court prepared by or released by the court, a probation department, or the county department of social services, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, any of those records or reports, any portion of those records or reports, and information relating to the contents of those

records or reports, shall not be made attachments to any other documents without the prior approval of the presiding judge of the juvenile court, unless they are used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal may disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) Notwithstanding subdivision (a), a written notice that a petition to declare a pupil enrolled in a public school, kindergarten to grade 12, inclusive, a ward of the court pursuant to Section 602 for the commission of a violent felony as defined in subdivision (c) of

Section 667.5 of the Penal Code shall be provided by the court or its designee, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense alleged to have been committed by the minor and whether the minor has been released from a secured detention facility. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors who directly supervised or reported on the behavior or progress of the minor. In addition, the principal may disseminate the information to any teacher or administrator who directly supervised or reported on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability. Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff. An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(4) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high

school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) or (3) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

SEC. 3.3. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a juvenile case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or

investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, which pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical, or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or

any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (J), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, and other forms of delinquency and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be

expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal may disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) Notwithstanding subdivision (a), a written notice that a petition to declare a pupil enrolled in a public school, kindergarten to grade 12, inclusive, a ward of the court pursuant to Section 602 for the commission of a violent felony as defined in subdivision (c) of Section 667.5 of the Penal Code shall be provided by the court or its designee, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense alleged to have been committed by the minor and whether the minor has been released from a secured detention facility. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors who directly supervised or reported on the behavior or progress of the minor. In addition, the principal may disseminate the information to any teacher or administrator who directly supervised or reported on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability. Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff. An intentional violation of the

confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(4) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

SEC. 4. (a) Section 3.1 of this bill incorporates amendments to Section 827 of the Welfare and Institutions Code proposed by both this bill and SB 199. 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 827 of the Welfare and Institutions Code, and (3) SB 334 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 199, in which case Section 3.1 of this bill shall become operative, and Sections 3, 3.2, and 3.3 of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 827 of the Welfare and Institutions Code proposed by both this bill and SB 334. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 827 of the Welfare and Institutions Code, (3) SB 199 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 334 in which case Section 3.2 of this bill shall become operative, and Sections 3, 3.1, and 3.3 of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 827 of the Welfare and Institutions Code proposed by this bill, SB 199, and SB 334. 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 827 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 199 and SB 334, in which case Section 3.3 of this bill shall become operative, and Sections 3, 3.1, and 3.2 of this bill shall not become operative.

CHAPTER 986

An act relating to state funds, and making an appropriation therefor.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 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 historic Chabot Observatory began as a public observatory in downtown Oakland, serving Oakland citizens and the greater bay area community, and through its programs has welcomed and educated over two million visitors since 1883.

(b) In the early 20th century, the observatory was administered by the Oakland Unified School District which made the facility an integral part of formal science education programs and also made it available for a large public program.

(c) The current Chabot Observatory and Science Center facility, consisting of a 1915-era observatory building, a separate planetarium, and several temporary classrooms and laboratories, severely limits the science center's ability to fulfill the vision for science education due to technological and structural safety issues, including its location directly on an active rift of the Hayward Fault and the interference from surrounding city lights that have encroached in the years since the observatory's construction and affect viewing through its historic 8-inch and 20-inch public telescopes.

(d) In 1989, Oakland's interest in having a regional science center that was responsive to the science education needs of its children and neighboring communities led to the creation of a joint powers agency by the City of Oakland, the Oakland Unified School District, and the East Bay Regional Park District, and these partner agencies have together contributed over $25,600,000 to this project.

(e) The vision of the new Chabot Observatory and Science Center is to create the nation's premier model for teaching science and technologies, where one can imagine, understand, and learn to shape the future through science.

(f) The goals of the observatory and science center are as follows:

(1) To present more effective and engaging ways for children and adults to explore science and technology.

(2) To train teachers in science education's best practices and new teaching technologies, and equip them with resources to use these in the classroom.

(3) To inspire students and their families to pursue higher levels of scientific literacy.

(4) To demonstrate the relevance of science and technology in everyday living.

(5) To link the center with other similar organizations, via telecommunications and the Internet, to support a dynamic statewide science education platform.

(g) California's youth must be science literate and comfortable with technology to be competitive job seekers, and it is widely recognized that the quality of science, mathematics, and environmental education needs to be improved in California and nationwide, and that there are endemic cycles of low achievement that persist in many high minority enrolled public schools, low-income neighborhoods, rural areas, and historically underrepresented groups.

(h) These deficiencies are particularly pressing in the diverse San Francisco Bay area, where the growth in science- and technology-related industries has created an enormous demand for educated, skilled workers.

(i) Many respected researchers have demonstrated the need for a fundamental shift in methods of science teaching to emphasize curriculum that is project-based, anchored in a "real world context," discovery oriented, and interdisciplinary, and the education of

teachers must be approached in a different way to reflect new approaches to curriculum, activities, and student needs.

(j) The educational programs of the Chabot Observatory and Science Center complement and supplement the school district's efforts to implement a more effective educational model by offering a wide range of programs and resources that schools and school districts cannot provide on their own. The science center will create effective statewide platforms for testing and evaluating distance learning, performance-based education, collaborative learning, and new experimental methods for education in the 21st century.

(k) The Chabot Observatory and Science Center places a major emphasis on engaging populations that are historically not well represented in science and technology education, including women, minorities, and low-income youth.

(*l*) The Chabot Observatory and Science Center has planned to build a new 77,000 square foot science education center in the Joaquin Miller Park of Oakland, to fulfill these goals and offer new programs for the people of the bay area.

(m) The Chabot Observatory and Science Center has raised over $47,400,000 to build a new science education center, including a $17,500,000 grant from the United States Air Force Office of Scientific Research. In recognition of its national significance, the Chabot Observatory and Science Center has been named a community affiliate of the Smithsonian Institution, one of eight in the country. Moreover, in conjunction with the White House Millennium Celebration Project, the Chabot Observatory and Science Center will link the nation's 30 Challenger Centers as the lead for a national student project on Mars exploration.

(n) The citizens of Oakland in 1996 voted approval for $6,500,000 for this new facility through the general obligation bond act known as Measure I.

(o) The Chabot Observatory and Science Center has raised over $1,500,000 in peer-reviewed scientific grants, $785,000 from private foundations, $800,000 from corporations, and over $1,500,000 from individuals to support planning and design of this new science education center.

(p) This act will provide $1,000,000 in state funds for the Chabot Observatory and Science Center, and will leverage new federal grant money and a challenge grant from a private foundation that is contingent on the state's contribution. This funding will assist in completion of the observatory's west building, which includes a National Science Foundation funded solar system dynamics modeling exhibition; a Challenger Center space mission simulator; the Teacher Research and Training Center; the library, computer lab, and media production studio; and the observatory's historic transit telescope. A significant feature of the west building is the Virtual Science Center, which enables classroom teachers throughout the state to call on Chabot's telescopes, laboratories, and

media resources for everyday support in their classrooms. In addition, this funding may assist in the construction of three telescope observatories to house the 8-inch refractor, the 20-inch refractor, and a 36-inch reflector, the largest telescope open to the public on a regular basis in the United States.

(q) This new facility is scheduled to open in 1999, and will include the magnificent historic Chabot telescopes; a new 36-inch computerized telescope; a state-of-the-art planetarium; interactive science exhibits for children, adults, and families; a Challenger Center space station and mission control simulator; a telescope makers' workshop; a fiber-optic linked multimedia center; a virtual science center for continuous online access and education in homes, communities, libraries, and schools; infrared technology for multilingual programs; and flexible, integrated laboratory spaces for science exploration and education.

(r) The Chabot Observatory and Science Center will become the California-based centerpiece institution for public astronomy and science education in the country, and will contribute toward the improvement of science education and technological literacy for California students, teachers, and families.

(s) The Lewis Center for Educational Research began as a public educational facility under the Apple Valley Unified School District in 1990 and has provided science education programs for over 80,000 students throughout southern California during its eight years of operation. The center is home to a California public school, kindergarten through 12th grade, operated by the High Desert "Partnership in Academic Excellence" Foundation, Incorporated (the foundation), a nonprofit educational foundation.

(t) Five hundred students attend science, astronomy, and aviation classes at the 11,000 square foot Lewis Center facility. Students can attend ground school and fly the T-40 Jet Flight Simulator provided by the United States Air Force. Students also learn computer skills in the Gateway to Excellence Program sponsored by GTE, and work in the greenhouse or study physics in the laboratory.

(u) In partnership with NASA and the Jet Propulsion Laboratory (JPL) in Pasadena, the Lewis Center operates the DSS 12, a deep space antenna located at the Goldstone Deep Space Tracking Station. This $11,000,000 antenna was converted into a radio telescope for the Goldstone Apple Valley Radio Telescope project (GAVRT). Students from across California and the nation direct this powerful scientific instrument by remote control via telecommunications through "Mission Control" housed at the Lewis Center. Staff from the Lewis Center and JPL train teachers from all areas of the United States to perform scheduled missions with their students, providing interactive opportunities for students from diverse backgrounds and locations to work together via telecommunications to study the wonders of the heavens.

(v) The Lewis Center observatory, with its 14-inch telescope provides optical viewing to support the work of radio astronomers. The center operates a telescope on Mount Wilson by remote control through the Telescopes in Education Program. The center's growing expertise in remote operations of scientific equipment and status as the worldwide educational site for kindergarten through 12th grade, inclusive, radio astronomy will provide a powerful statewide linkage to the Chabot Observatory and Science Center.

(w) The vision of the new Chabot Observatory and Science Center and the Lewis Center for Educational Research is to create the nation's premier model for teaching science and technologies, where one can imagine, understand, and learn to shape the future through science.

(x) The goals of these two observatories and science centers are as follows:

(1) To present more effective and engaging ways for children and adults to explore science and technology.

(2) To train teachers in science education's best practices and new teaching technologies, and equip them with resources to use these in the classroom.

(3) To inspire students and their families to pursue higher levels of scientific literacy.

(4) To demonstrate the relevance of science and technology in everyday living.

(5) To electronically link these two innovative science centers together, and to link these centers with other similar organizations, via telecommunications and the Internet, to support a dynamic statewide science education platform.

(y) California's youth must be science literate and comfortable with technology to be competitive jobseekers, and it is widely recognized that the quality of science, mathematics, and environmental education needs to be improved in California and nationwide, and that there are endemic cycles of low achievement that persist in many high minority enrolled public schools, low-income neighborhoods, rural areas, and historically underrepresented groups.

(z) The educational programs of the Chabot Observatory and Science Center and the Lewis Center for Educational Research complement and supplement the school district's efforts to implement a more effective educational model by offering a wide range of programs and resources that schools and school districts cannot provide on their own. These science centers will create effective statewide platforms for testing and evaluating distance learning, performance-based education, collaborative learning, and new experimental methods for education in the 21st century.

(aa) The Chabot Observatory and Science Center and the Lewis Center for Educational Research place a major emphasis on engaging populations that are historically not well represented in science and

technology education, including women, minorities, and low-income youth.

(ab) The Lewis Center for Educational Research plans to purchase land and build a second facility, the Lewis Center for Earth Science. The location of the new building will take advantage of an environmentally rich portion of the Mojave River that is a destination for numerous migratory birds to provide students with onsite capability to study planet Earth up close. A large portion of the proposed tract of land will provide a preserve for native species in a highly unique biome of southern California.

(ac) The new facility will be linked electronically to the Lewis and Chabot observatories to allow students from around the state to work collaboratively studying the environment of our home planet to compare and contrast the differences and similarities of objects within our solar system and those of deep space.

(ad) The Lewis Center's current facility has been funded from community and business donations and other partnerships, including an $850,000 grant from the federal Department of Housing and Urban Development and $500,000 contributed from the foundation. In 1998, the Lewis Center received a $1,500,000 special purpose grant from NASA for teacher training, curriculum development, and student programs through GAVRT. The new facility will leverage funding provided by these partnerships.

(ae) The new Lewis Center for Earth Science will include a planetarium, theater, classrooms, greenhouse, aviary, outdoor research areas, and remote sensing devices including television cameras to view the nocturnal creatures that inhabit this area. The expansion will enable 3,000 students per month to participate in field trip activities, and classes and will enable thousands more to participate online. A new mobile planetarium, telescope, and computer center will travel from the Lewis Center to schoolsites for a four-day intensive infusion of science and teaching strategies involving teachers, students, and families.

(af) The Chabot Observatory and Science Center and the Lewis Center for Earth Science will become California-based centerpiece institutions for public astronomy and science education in the country, and will contribute toward the improvement of science education and technological literacy for California students, teachers, and families.

SEC. 2. (a) The sum of six million nine hundred seventy thousand dollars ($6,970,000) is hereby appropriated from the General Fund to be allocated as follows:

(1) One million dollars ($1,000,000) to the California Arts Council for the Chabot Observatory and Science Center, a joint powers agency created by the City of Oakland, the Oakland Unified School District, and the East Bay Regional Park District, to help fund the completion of the new Chabot Observatory and Science Center facility in Oakland for the people of the state.

(2) One million dollars ($1,000,000) to the town of Apple Valley to administer a grant to the nonprofit High Desert "Partnership in Academic Excellence" Foundation, Incorporated, to provide classroom and laboratory space for the Lewis Center for Earth Science.

(3) One million dollars ($1,000,000) to the City of Los Angeles Department of Parks and Recreation for renovation work at the Griffith Observatory.

(4) One million dollars ($1,000,000) to the Office of Criminal Justice Planning for the Plaza de la Raza for at-risk youth mentoring.

(5) Two hundred fifty thousand dollars ($250,000) to the Office of Criminal Justice Planning for the Orange County TracKRS Program.

(6) One million dollars ($1,000,000) to the California Arts Council for allocation to the Los Angeles Children's Museum.

(7) One million dollars ($1,000,000) to the California Arts Council for allocation to the Hollywood Entertainment Museum.

(8) Three hundred twenty thousand dollars ($320,000) to the County of Los Angeles Local Agency Formation Commission for the purposes of conducting a secession study for the Harbor Area.

(9) Four hundred thousand dollars ($400,000) to the Department of Parks and Recreation to maintain a unit of the state parks system that preserves and restores cultural and historical resources in northern California related to immigration into this state.

SEC. 3. Notwithstanding any other provision of law, the funds appropriated for capital improvements to the Japanese-American National Museum pursuant to Item 8260-103-001 of Section 2 of Chapter 50 of the Statutes of 1999 shall be expended for design or construction of facilities or for exhibits, furniture, equipment, or acquisitions, or all of these, for the Media Arts Center, the Orientation Theater, and the National Resource Center.

(b) Notwithstanding any other provision of law, including Section 7550.5 of the Government Code, the Legislative Analyst shall review the use of funds appropriated to the Chabot Observatory and Science Center and the new Lewis Center for Earth Science pursuant to Chapter 950 of the Statutes of 1998 and shall prepare and submit a report to the Legislature by January 10, 2000, on its findings regarding the use of these funds.

(c) As a condition of receiving funds appropriated by this act and notwithstanding Section 7550.5 of the Government Code, both the Chabot Observatory and Science Center and the new Lewis Center for Earth Science shall submit a report to the Joint Legislative Budget Committee and the Department of Finance on their expenditure of the funds appropriated by this act not more than 60 days after completion of their respective facilities.

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CHAPTER 987

An act to amend Section 52514.5 of the Health and Safety Code, to amend Sections 9201 and 9203 of the Probate Code, to amend Sections 17053.45, 17053.49, 17054.5, 17071, 17073, 17074, 17075, 17076, 17077, 17083, 17085, 17087, 17140, 17140.3, 17142.5, 17143, 17144, 17250, 17268, 17270, 17274, 17276.5, 17287, 17551, 17552, 17553, 17639, 17640, 17651, 17671, 17732, 17851, 17853, 17857, 17935, 18601, 18604, 18622, 18662, 18711, 18721, 18741, 18763, 18782, 18793, 18801, 18812, 18821, 18841, 18851, 18871, 19023, 19059, 19060, 19089, 19106, 19145, 19151, 19311, 19411, 23153, 23221, 23335, 23612.2, 23622.7, 23645, 23649, 23701c, 23704.5, 23704.6, 23731, 23736.1, 23740, 23776, 23777, 23778, 24306, 24357.6, 24410, 24416.2, 24416.5, 24436.5, 25106, and 25114 of, and to repeal Sections 17013, 17077.5, 17084, 17085.5, 17132.5, 17134.5, 17139, 17218, 17275.6, 17330, 17551.5, 17563, 17852, 17859, 17860, 18605, 19053, 23043, and 23701q of, the Revenue and Taxation Code, and to amend Section 1185 of the Unemployment Insurance Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

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

SECTION 1. Section 52514.5 of the Health and Safety Code is amended to read:

52514.5. All payments to the agency by the borrower on any note executed pursuant to Section 52514 shall be considered payments of interest for the purposes of Section 17230 of the Revenue and Taxation Code.

SEC. 2. Section 9201 of the Probate Code is amended to read:

9201. (a) Notwithstanding any other statute, if a claim of a public entity arises under a law, act, or code listed in subdivision (b):

(1) The public entity may provide a form to be used for the written notice or request to the public entity required by this chapter. Where appropriate, the form may require the decedent's social security number, if known.

(2) The claim is barred only after written notice or request to the public entity and expiration of the period provided in the applicable section. If no written notice or request is made, the claim is enforceable by the remedies, and is barred at the time, otherwise provided in the law, act, or code.

(b)

Law, Act, or Code	Applicable Section
Sales and Use Tax Law (commencing with Section 6001 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Bradley–Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code)	Section 7675.1 of the Revenue and Taxation Code
Use Fuel Tax Law (commencing with Section 8601 of the Revenue and Taxation Code)	Section 8782.1 of the Revenue and Taxation Code
Administration of Franchise and Income Tax Law (commencing with Section 18401 of the Revenue and Taxation Code)	Section 19517 of the Revenue and Taxation Code
Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code)	Section 30207.1 of the Revenue and Taxation Code
Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code)	Section 32272.1 of the Revenue and Taxation Code
Unemployment Insurance Code	Section 1090 of the Unemployment Insurance Code

State Hospitals for the Mentally Disordered (commencing with Section 7200 of the Welfare and Institutions Code)	Section 7277.1 of the Welfare and Institutions Code
Medi–Cal Act (commencing with Section 14000 of the Welfare and Institutions Code)	Section 9202 of the Probate Code
Waxman–Duffy Prepaid Health Plan Act (commencing with Section 14200 of the Welfare and Institutions Code)	Section 9202 of the Probate Code

SEC. 3. Section 9203 of the Probate Code is amended to read:

9203. (a) Failure of a person to give the written notice or request required by this chapter does not affect the validity of any proceeding under this code concerning the administration of the decedent's estate.

(b) If property in the estate is distributed before expiration of the time allowed a public entity to file a claim, the public entity has a claim against the distributees to the full extent of the public entity's claim, or each distributee's share of the distributed property, whichever is less. The public entity's claim against distributees includes interest at a rate equal to that specified in Section 19521 of the Revenue and Taxation Code, from the date of distribution or the date of filing the claim by the public entity, whichever is later, plus other accruing costs as in the case of enforcement of a money judgment.

SEC. 4. Section 17013 of the Revenue and Taxation Code is repealed.

SEC. 5. Section 17053.45 of the Revenue and Taxation Code is amended to read:

17053.45. (a) For each taxable year beginning on or after January 1, 1995, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property to the extent that the qualified property does not exceed a value of one million dollars ($1,000,000).

(b) For purposes of this section:

(1) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(2) "Taxpayer" means a taxpayer that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B), the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(3) "Qualified property" means property that is each of the following:

(A) Purchased by the taxpayer for exclusive use in a trade or business conducted within a LAMBRA.

(B) Purchased before the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(C) Any of the following:

(i) High technology equipment, including, but not limited to, computers and electronic processing equipment.

(ii) Aircraft maintenance equipment, including, but not limited to, engine stands, hydraulic mules, power carts, test equipment, handtools, aircraft start carts, and tugs.

(iii) Aircraft components, including, but not limited to, engines, fuel control units, hydraulic pumps, avionics, starts, wheels, and tires.

(iv) Section 1245 property, as defined in Section 1245(a)(3) of the Internal Revenue Code.

(c) The credit provided under subdivision (a) shall be allowed only for qualified property manufactured in California unless qualified property of a comparable quality and price is not available for timely purchase and delivery from a California manufacturer.

(d) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the

credit which exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Section 17053.46, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributable income represented all the income of the taxpayer subject to tax under this part.

(2) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the LAMBRA. For that purpose, the taxpayer's business income that is attributable to sources in this state shall first be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the LAMBRA in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, as modified for purposes of this section in accordance with paragraph (3).

(3) Income shall be apportioned to a LAMBRA by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor, plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the LAMBRA during the taxable year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the LAMBRA during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (d).

(g) (1) If the qualified property is disposed of or no longer used by the taxpayer in the LAMBRA, at any time before the close of the second taxable year after the property is placed in service, the amount of the credit previously claimed, with respect to that

property, shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(2) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's net tax for the taxpayer's second taxable year.

(h) If the taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(i) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1998.

SEC. 6. Section 17053.49 of the Revenue and Taxation Code is amended to read:

17053.49. (a) (1) A qualified taxpayer shall be allowed a credit against the "net tax," as defined in Section 17039, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(2) In the case of any qualified costs paid or incurred on or after January 1, 1994, and prior to the first taxable year of the qualified taxpayer beginning on or after January 1, 1995, the credit provided under paragraph (1) shall be claimed by the qualified taxpayer on the qualified taxpayer's return for the first taxable year beginning on or after January 1, 1995. No credit shall be claimed under this section on a return filed for any taxable year commencing prior to the qualified taxpayer's first taxable year beginning on or after January 1, 1995.

(b) (1) For purposes of this section, "qualified cost" means any cost that satisfies each of the following conditions:

(A) Except as otherwise provided in this subparagraph, is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i). In the case of any qualified property constructed, reconstructed, or acquired by the qualified taxpayer (or any person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) pursuant to a binding contract in existence on or prior to January 1, 1994, costs paid pursuant to that contract shall be subject to allocation as follows: contract costs shall be allocated to qualified property based on a ratio of costs actually paid prior to January 1, 1994, and total contract costs actually paid. "Cost paid" shall include, without limitation, contractual deposits and option payments. To the extent of costs allocated, whether or not currently deductible or depreciable for tax purposes, to a period prior to January 1, 1994, the cost shall be deemed allocated to property acquired before January 1, 1994, and is thus not a "qualified cost."

(B) Except as provided in paragraph (3) of subdivision (d) and subparagraph (B) of paragraph (4) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly, as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001).

(C) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(2) (A) For purposes of this subdivision, any contract entered into on or after January 1, 1994, that is a successor or replacement contract to a contract that was binding prior to January 1, 1994, shall be treated as a binding contract in existence prior to January 1, 1994.

(B) If a successor or replacement contract is entered into on or after January 1, 1994, and the subject of the successor or replacement contract relates both to amounts for the construction, reconstruction, or acquisition of qualified property described in the original binding contract and to costs for the construction, reconstruction, or acquisition of qualified property not described in the original binding contract, then the portion of those amounts described in the successor or replacement contract that were not described in the original binding contract shall not be treated as costs paid or incurred pursuant to a binding contract in existence on or prior to January 1, 1994, under subparagraph (A) of paragraph (1).

(3) (A) For purposes of this section, an option contract in existence prior to January 1, 1994, under which a qualified taxpayer (or any other person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) had an option to acquire qualified property, shall be treated as a binding contract under the rules in paragraph (2). For purposes of this subparagraph, an option contract shall not include an option under which the optionholder will forfeit an amount less than 10 percent of the fixed option price in the event the option is not exercised.

(B) For purposes of this section, a contract shall be treated as binding even if the contract is subject to a condition.

(4) For purposes of this subdivision, in the case of any qualified taxpayer engaged in those lines of business described in Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "the first taxable year beginning on or after January 1, 1998," shall be substituted for "January 1, 1994," in each place in which it appears.

(c) (1) For purposes of this section, "qualified taxpayer" means any taxpayer engaged in those lines of business described in Codes 2011 to 3999, inclusive, or Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be

made at the entity level and any credit under this section or Section 23649 shall be allowed to the passthrough entity and passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, the term "passthrough entity" means any partnership or S corporation.

(3) The Franchise Tax Board may prescribe regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the effect of this section through splitups, shell corporations, partnerships, tiered ownership structures, sale-leaseback transactions, or otherwise.

(d) For purposes of this section, "qualified property" means property that is described as any of the following:

(1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that is primarily used for any of the following:

(A) For the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(B) In research and development.

(C) To maintain, repair, measure, or test any property described in this paragraph.

(D) For pollution control that meets or exceeds standards established by the state or by any local or regional governmental agency within the state.

(E) For recycling.

(2) Computers and computer peripheral equipment, as defined in Section 168(i)(2)(B) of the Internal Revenue Code, that is tangible personal property as defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in SIC Codes 7371 to 7373, inclusive, of the SIC Manual, 1987 edition, that is primarily used to develop or manufacture prepackaged software or custom software prepared to the special order of the purchaser who uses the program to produce and sell or license copies of the program as prepackaged software.

(3) The value of any capitalized labor costs that are directly allocable to the construction or modification of property described in paragraph (1) or (2).

(4) In the case of any qualified taxpayer engaged in manufacturing activities described in SIC Code 357 or 367, those

activities related to biotechnology described in SIC Code 8731, those activities related to biopharmaceutical establishments only that are described in SIC Codes 2833 to 2836, inclusive, those activities related to space vehicles and parts described in SIC Codes 3761 to 3769, inclusive, those activities related to space satellites and communications satellites and equipment described in SIC Codes 3663 and 3812 (but only with respect to "qualified property" that is placed in service on or after January 1, 1996), or those activities related to semiconductor equipment manufacturing described in SIC Code 3559 (but only with respect to "qualified property" that is placed in service on or after January 1, 1997), "qualified property" also includes the following:

(A) Special purpose buildings and foundations that are constructed or modified for use by the qualified taxpayer primarily in a manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(B) The value of any capitalized labor costs that are directly allocable to the construction or modification of special purpose buildings and foundations that are used primarily in the manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(C) (i) For purposes of this paragraph, "special purpose building and foundation" means only a building and the foundation immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subparagraph (A) ("qualified purpose").

(ii) A building is specifically designed and constructed or modified for a qualified purpose if it is not economical to design and construct the building for the intended purpose and then use the structure for a different purpose.

(iii) For purposes of clause (i) and clause (vi), a building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate to the qualified purpose. It will be conclusively presumed that a use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualified purpose.

(iv) In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a

building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subparagraph.

(v) To the extent that a building is not a special purpose building as defined above, but a portion of the building qualifies for treatment as a special purpose building, then all equipment which exclusively supports the qualified purpose occurring within that portion and which would qualify as Internal Revenue Code Section 1245 property if it were not a fixture or affixed to the building shall be treated as a cost of the portion of the building which qualifies for treatment as a special purpose building.

(vi) Buildings and foundations which do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to: buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process. A research facility shall not be considered to be used primarily prior to or after, or prior to and after, the manufacturing process if its purpose and use relate exclusively to the development and regulatory approval of the manufacturing process for specific biopharmaceutical products. A research facility which is used primarily in connection with the discovery of an organism from which a biopharmaceutical product or process is developed does not meet the requirements of the preceding sentence.

(5) Subject to the provisions in subparagraph (B) of paragraph (1) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) or (2) of this subdivision.

(6) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(G) Any vehicle for which a credit is claimed pursuant to Section 17052.11 or 23603.

(e) For purposes of this section:

(1) "Biopharmaceutical activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide

pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(2) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(4) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(5) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(6) "Process" means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer's manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(7) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(9) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) "Small business" means a qualified taxpayer that meets any of the following requirements during the taxable year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars ($50,000,000).

(B) Has net assets of less than fifty million dollars ($50,000,000).

(C) Has a total credit of less than one million dollars ($1,000,000).

(D) For taxable years beginning on or after January 1, 1997, is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and has not received regulatory approval for any product from the United States Food and Drug Administration.

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, shall not be allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

(2) For purposes of paragraphs (2) and (3) of subdivision (b), "binding contract" shall include any lease agreement with respect to the qualified property.

(3) (A) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is not treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(i) Except as provided by subparagraph (C) of this paragraph, subparagraphs (A) and (C) of paragraph (1) of subdivision (b) shall not apply.

(ii) Except as provided in subparagraph (B) and clause (iii), the "qualified cost" upon which the lessee shall compute the credit provided under this section shall be equal to the original cost to the lessor (within the meaning of Section 18031) of the qualified property that is the subject of the lease.

(iii) Except as provided in clause (iv), the requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied only if the lessor has made a timely election under either Section 6094.1 or subdivision (d) of Section 6244 and has paid sales tax reimbursement or use tax measured by the purchase price of the qualified property (within the meaning of paragraph (5) of subdivision (g) of Section 6006). For purposes of this subdivision and clause (iv), the amount of original cost to the lessor which may be taken into account under clause (ii) shall not exceed the purchase price upon which sales tax reimbursement or use tax has been paid under the preceding sentence or under clause (iv).

(iv) With respect to leases entered into between January 1, 1994, and the effective date of this clause, the lessor may elect to pay use tax measured by the purchase price of the property by reporting and paying the tax with the return of the lessor for the fourth calendar quarter of 1994. In computing the use tax under the preceding sentence, a credit shall be allowed under Part 1 (commencing with Section 6001) for all sales or use tax previously paid on the lease.

(B) For purposes of applying subparagraph (A) only, the following special rules shall apply:

(i) The original cost to the lessor of the qualified property shall be reduced by the amount of any original cost of that property that was taken into account by any predecessor lessee in computing the credit allowable under this section.

(ii) Clause (i) shall not apply in any case where the predecessor lessee was required to recapture the credit provided under this section pursuant to subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001), the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified property that was taken into account by any lessee of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i), shall be taken into account. In the case of any qualified property constructed, reconstructed, or acquired by a lessor pursuant to a binding contract in existence on or prior to January 1, 1994, the allocation rule specified in subparagraph (A) of paragraph (1) of subdivision (b) shall apply in determining the original cost to the lessor of qualified property.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's) acquisition of the qualified property from the lessor (or successor lessor) shall be treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(4) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(A) Subparagraph (A) of paragraph (1) of subdivision (b) shall be applied by substituting the term "purchase" for the term "construction, reconstruction, or acquisition."

(B) Subparagraph (C) of paragraph (1) of subdivision (b) shall apply.

(C) The requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001).

(5) (A) In the case of any leasing transaction described in paragraph (3), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

(B) The statement required under subparagraph (A) shall be made available to the Franchise Tax Board upon request.

(6) For purposes of this subdivision, in the case of any qualified taxpayer engaged in those lines of business described in Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "the first taxable year beginning on or after January 1, 1998," shall be substituted for "January 1, 1994," in each place in which it appears. In addition, "the effective date of this paragraph" shall be substituted for "the effective date of this clause" and "fourth calendar quarter of 1998" shall be substituted for "fourth calendar quarter of 1994."

(g) No credit shall be allowed if the qualified property is removed from the state, is disposed of to an unrelated party, or is used for any purpose not qualifying for the credit provided in this section in the same taxable year in which the qualified property is first placed in service in this state. If any qualified property for which a credit is allowed pursuant to this section is thereafter removed from this state, disposed of to an unrelated party, or used for any purpose not qualifying for the credit provided in this section within one year from the date the qualified property is first placed in service in this state, the amount of the credit allowed by this section for that qualified property shall be recaptured by adding that credit amount to the net tax of the qualified taxpayer for the taxable year in which the qualified property is disposed of, removed, or put to an ineligible use.

(h) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years as follows:

(1) Except as provided in paragraph (2), for the seven succeeding years if necessary, until the credit is exhausted.

(2) In the case of a small business, for the nine succeeding years, if necessary, until the credit is exhausted.

(i) (1) This section shall remain in effect until the date specified in paragraph (2), on which date this section shall cease to be operative, and as of that date is repealed.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

(j) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1997, except as provided in paragraph (3) of subdivision (d).

(k) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1998.

SEC. 6.5. Section 17054.5 of the Revenue and Taxation Code is amended to read:

17054.5. (a) (1) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) of a qualified individual an amount equal to 30 percent of the net tax.

(2) For taxable years beginning on or after January 1, 1987, and before January 1, 1988, a qualified individual means a qualified joint custody head of household as defined in subdivision (c).

(3) For taxable years beginning on or after January 1, 1988, a qualified individual means either of the following:

(A) A "qualified joint custody head of household" as defined in subdivision (c).

(B) A "qualified taxpayer" as defined in subdivision (e).

(4) The amount of the credit under this section shall not exceed two hundred dollars ($200) for any taxable year.

(b) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the maximum credit prescribed in subdivision (a). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index as modified for rental equivalent homeownership for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall add 100 percent to the percentage change figure which is furnished to them pursuant to paragraph (1) and divide the result by 100.

(3) The Franchise Tax Board shall multiply the immediately preceding taxable year credit by the inflation adjustment factor

determined in paragraph (2), and round off the resulting product to the nearest one dollar ($1).

(c) "Qualified joint custody head of household" means an individual who meets all of the following:

(1) Is not married at the close of the taxable year, or files a separate return and does not have his or her spouse as a member of his or her household during the entire taxable year.

(2) Maintains as his or her home a household which constitutes for the taxable year the principal place of abode for a qualifying child, as defined in subdivision (d), for no less than 146 days of the taxable year but no more than 219 days of the taxable year, under a decree of dissolution or separate maintenance, or under a written agreement between the parents prior to the issuance of a decree of dissolution or separate maintenance where the proceedings have been initiated.

(3) Furnishes over one-half the cost of maintaining the household during the taxable year.

(4) Does not qualify as a head of household under Section 17042 or as a surviving spouse under Section 17046.

(d) For purposes of this section, a "qualifying child" means a son, stepson, daughter, or stepdaughter of the taxpayer or a descendant of a son or daughter of the taxpayer, but if that son, stepson, daughter, stepdaughter, or descendant is married at the close of the taxpayer's taxable year, only if the taxpayer is entitled to a credit for the taxable year for that person under Section 17054.

(e) "Qualified taxpayer" means an individual who meets all of the following:

(1) Is married and files a separate return.

(2) During the last six months of the taxable year the taxpayer's spouse was not a member of the taxpayer's household.

(3) Maintains a household, whether or not the taxpayer's home, which constitutes the principal place of abode of a dependent mother or father of the taxpayer for the taxable year.

(4) Furnishes over one-half of the cost of maintaining the household during the taxable year.

(5) Does not qualify as a head of household under Section 17042 or as a surviving spouse under Section 17046.

SEC. 7. Section 17071 of the Revenue and Taxation Code is amended to read:

17071. Section 61 of the Internal Revenue Code, relating to gross income defined, shall apply, except as otherwise provided.

SEC. 8. Section 17073 of the Revenue and Taxation Code is amended to read:

17073. (a) Section 63 of the Internal Revenue Code, relating to taxable income defined, shall apply, except as otherwise provided.

(b) For individuals who do not itemize deductions, the standard deduction computed in accordance with Section 17073.5 shall be allowed as a deduction in computing taxable income.

SEC. 9. Section 17074 of the Revenue and Taxation Code is amended to read:

17074. Section 64 of the Internal Revenue Code, relating to ordinary income defined, shall apply, except as otherwise provided.

SEC. 10. Section 17075 of the Revenue and Taxation Code is amended to read:

17075. Section 65 of the Internal Revenue Code, relating to ordinary loss defined, shall apply, except as otherwise provided.

SEC. 11. Section 17076 of the Revenue and Taxation Code is amended to read:

17076. Section 67 of the Internal Revenue Code, relating to the 2-percent floor on miscellaneous itemized deductions, shall apply, except as otherwise provided.

SEC. 12. Section 17077 of the Revenue and Taxation Code is amended to read:

17077. Section 68 of the Internal Revenue Code, relating to overall limitation on itemized deductions, shall apply, except as otherwise provided.

(a) "Six percent" shall be substituted for "3 percent" in Section 68(a)(1) of the Internal Revenue Code.

(b) Section 68(b)(1) of the Internal Revenue Code shall not apply and in lieu thereof the term "applicable amount" in each place it appears in Section 68(a) of the Internal Revenue Code means one hundred thousand dollars ($100,000) in the case of a single individual or a married individual making a separate return, one hundred fifty thousand dollars ($150,000) in the case of a head of household, and two hundred thousand dollars ($200,000) in the case of a surviving spouse or a husband and wife making a joint return.

(c) Section 68(b)(2) of the Internal Revenue Code, relating to inflation adjustments, shall not apply. However, for any taxable year beginning on or after January 1, 1992, the applicable amounts specified in subdivision (b) shall be recomputed annually in the same manner as the recomputation of income tax brackets under subdivision (h) of Section 17041.

SEC. 13. Section 17077.5 of the Revenue and Taxation Code is repealed.

SEC. 14. Section 17083 of the Revenue and Taxation Code is amended to read:

17083. Section 85 of the Internal Revenue Code, relating to unemployment compensation, shall not apply.

SEC. 15. Section 17084 of the Revenue and Taxation Code is repealed.

SEC. 16. Section 17085 of the Revenue and Taxation Code is amended to read:

17085. Section 72 of the Internal Revenue Code, relating to annuities and certain proceeds of life insurance contracts, shall be modified as follows:

(a) The amendments and transitional rules made by Public Law 99-514 shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except that the repeal of Section 72(d) of the Internal Revenue Code, relating to repeal of special rule for employees' annuities, shall apply only to the following:

(1) Any individual whose annuity starting date is after December 31, 1986.

(2) At the election of the taxpayer, any individual whose annuity starting date is after July 1, 1986, and before January 1, 1987.

(b) The amount of a distribution from an individual retirement account or annuity or employees' trust or employee annuity that is includable in gross income for federal purposes shall be reduced for purposes of this part by the lesser of either of the following:

(1) An amount equal to the amount includable in federal gross income for the taxable year.

(2) An amount equal to the basis in the account or annuity allowed by Section 17507 (relating to individual retirement accounts and simplified employee pensions) or the increased basis allowed by Sections 17504 and 17506 (relating to plans of self-employed individuals) remaining after adjustment for reductions in gross income under this provision in prior taxable years.

(c) (1) Except as provided in paragraph (2), the amount of the penalty imposed under this part shall be computed in accordance with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code using a rate of $2^1/_2$ percent, in lieu of the rate provided in those sections.

(2) In the case where Section 72(t)(6) of the Internal Revenue Code, relating to special rules for simple retirement accounts, applies, the rate in paragraph (1) shall be 6 percent in lieu of the $2^1/_2$ percent rate specified therein.

(d) Section 72(f)(2) of the Internal Revenue Code, relating to special rules for computing employees' contributions, shall be applicable without applying the exceptions which immediately follow that paragraph.

SEC. 17. Section 17085.5 of the Revenue and Taxation Code is repealed.

SEC. 18. Section 17087 of the Revenue and Taxation Code is amended to read:

17087. (a) Section 86 of the Internal Revenue Code, relating to Social Security and Tier 1 Railroad Retirement Benefits, shall not apply.

(b) Section 72(r) of the Internal Revenue Code, relating to Tier 2 Railroad Retirement Benefits, shall not apply.

(c) Section 105(h) of the Internal Revenue Code, relating to sick pay under the Railroad Unemployment Insurance Act, shall not apply.

SEC. 19. Section 17132.5 of the Revenue and Taxation Code is repealed.

SEC. 20. Section 17134.5 of the Revenue and Taxation Code is repealed.

SEC. 21. Section 17139 of the Revenue and Taxation Code is repealed.

SEC. 22. Section 17140 of the Revenue and Taxation Code is amended to read:

17140. (a) For purposes of this section, the following terms have the following meanings as provided in the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code):

(1) "Beneficiary" has the meaning set forth in subdivision (c) of Section 69980 of the Education Code.

(2) "Benefit" has the meaning set forth in subdivision (d) of Section 69980 of the Education Code.

(3) "Participant" has the meaning set forth in subdivision (h) of Section 69980 of the Education Code.

(4) "Participation agreement" has the meaning set forth in subdivision (i) of Section 69980 of the Education Code.

(5) "Scholarshare trust" has the meaning set forth in subdivision (f) of Section 69980 of the Education Code.

(b) Except as otherwise provided in subdivision (c), gross income of a beneficiary or a participant does not include any of the following:

(1) Any distribution or earnings under a Scholarshare trust participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(2) Any contribution to the Scholarshare trust on behalf of a beneficiary shall not be includable as gross income of that beneficiary.

(c) (1) Any distribution under a Scholarshare trust participation agreement shall be includable in the gross income of the distributee in the manner as provided under Section 72 of the Internal Revenue Code, as modified by Section 17085, to the extent not excluded from gross income under this part. For purposes of applying Section 72 of the Internal Revenue Code, the following apply:

(A) All Scholarshare trust accounts of which an individual is a beneficiary shall be treated as one account, except as otherwise provided.

(B) All distributions during a taxable year shall be treated as one distribution.

(C) The value of the participation agreement, income on the participation agreement, and investment in the participation agreement shall be computed as of the close of the calendar year in which the taxable year begins.

(2) A contribution by a for-profit or nonprofit entity, or by a state or local government agency, for the benefit of an owner or employee of that entity or a beneficiary whom the owner or employee has the

power to designate, including the owner or employee's minor children, shall be included in the gross income of that owner or employee in the year the contribution is made.

(3) For purposes of this subdivision, "distribution" includes any benefit furnished to a beneficiary under a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(4) (A) Paragraph (1) shall not apply to that portion of any distribution that, within 60 days of distribution, is transferred to the credit of another beneficiary under the Scholarshare trust who is a "member of the family," as that term is used in Section 529(e)(2) of the Internal Revenue Code, as amended by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34), of the former beneficiary of that Scholarshare trust.

(B) Any change in the beneficiary of an interest in the Scholarshare trust shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a "member of the family," as that term is used in Section 529(e)(2) of the Internal Revenue Code, as amended by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34), of the former beneficiary of that Scholarshare trust.

(d) For purposes of determining adjusted gross income, Section 62(a)(9) of the Internal Revenue Code shall not apply to any amount forfeited upon distribution of an account created pursuant to a participation agreement.

(e) The amendments made to the Internal Revenue Code by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34) shall apply to taxable years beginning on or after January 1, 1998.

SEC. 23. Section 17140.3 of the Revenue and Taxation Code is amended to read:

17140.3. Section 529 of the Internal Revenue Code, relating to qualified state tuition programs, shall apply, except as otherwise provided.

(a) Section 529 (a) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase "under this part and Part 11 (commencing with Section 23001)" in lieu of the phrase "under this subtitle."

(2) By substituting "Article 2 (commencing with Section 23731)" in lieu of "Section 511."

(b) A copy of the report required to be filed with the Secretary of the Treasury under Section 529(d) of the Internal Revenue Code shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

SEC. 24. Section 17142.5 of the Revenue and Taxation Code is amended to read:

17142.5. (a) For purposes of the following provisions of the Internal Revenue Code, a qualified hazardous duty area shall be

treated in the same manner as if it were a combat zone (as determined under Section 112 of the Internal Revenue Code):

(1) Section 2 (a)(3) (relating to a special rule where a deceased spouse was in missing status).

(2) Section 112 (relating to certain combat zone compensation of members of the Armed Forces).

(3) Section 692 (relating to income taxes of members of Armed Forces upon death).

(4) Section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone).

(b) "Qualified hazardous duty area" means Bosnia and Herzegovina, Croatia, or Macedonia, if, as of March 20, 1996, any member of the Armed Forces of the United States is entitled to special pay under Section 310 of Title 37 of the United States Code (relating to special pay; duty subject to hostile fire or imminent danger) for services performed in that country. "Qualified hazardous duty area" includes any country only during the period that entitlement is in effect. Solely for purposes of applying Section 7508 of the Internal Revenue Code, in the case of an individual who is performing services as part of Operation Joint Endeavor outside the United States while deployed away from the individual's permanent duty station, the term "qualified hazardous duty area" includes, during the period for which that entitlement is in effect, any area in which those services are performed.

SEC. 25. Section 17143 of the Revenue and Taxation Code is amended to read:

17143. Sections 103 and 141 to 150, inclusive, of the Internal Revenue Code, relating to interest on governmental obligations, shall not apply.

SEC. 26. Section 17144 of the Revenue and Taxation Code is amended to read:

17144. (a) Section 108(b)(2)(B) of the Internal Revenue Code, relating to general business credit, is modified by substituting "this part" in lieu of "Section 38 (relating to general business credit)."

(b) Section 108(b)(2)(G) of the Internal Revenue Code, relating to foreign tax credit carryovers, shall not apply.

(c) Section 108(b)(3)(B) of the Internal Revenue Code, relating to credit carryover reduction, is modified by substituting "11.1 cents" in lieu of "$33^1/_3$ cents" in each place in which it appears. In the case where more than one credit is allowable under this part, the credits shall be reduced on a pro rata basis.

(d) Section 108(g)(3)(B) of the Internal Revenue Code, relating to adjusted tax attributes, is modified by substituting "($9)" in lieu of "($3)."

(e) (1) If a taxpayer makes an election for federal income tax purposes under Section 108(c) of the Internal Revenue Code, relating to treatment of discharge of qualified real property business indebtedness, a separate election shall not be allowed under

paragraph (3) of subdivision (e) of Section 17024.5 and the federal election shall be binding for purposes of this part.

(2) If a taxpayer has not made an election for federal income tax purposes under Section 108(c) of the Internal Revenue Code, relating to treatment of discharge of qualified real property business indebtedness, then the taxpayer shall not be allowed to make that election for purposes of this part.

SEC. 27. Section 17218 of the Revenue and Taxation Code is repealed.

SEC. 28. Section 17250 of the Revenue and Taxation Code is amended to read:

17250. (a) Section 168 of the Internal Revenue Code is modified as follows:

(1) Any reference to "tax imposed by this chapter" in Section 168 of the Internal Revenue Code means "net tax," as defined in Section 17039.

(2) (A) Section 168(e)(3) is modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall be "five-year property," rather than "10-year property."

(B) Section 168(g)(3) of the Internal Revenue Code is modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce's Disease in that vineyard, shall have a class life of 10 years.

(C) Every taxpayer claiming a depreciation deduction with respect to grapevines as described in this paragraph shall obtain a written certification from an independent state-certified integrated pest management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera or Pierce's Disease. The taxpayer shall retain the certification for future audit purposes.

(3) Section 168(j) of the Internal Revenue Code, relating to property on Indian reservations, shall not apply.

(b) Section 169 of the Internal Revenue Code, relating to amortization of pollution control facilities, is modified as follows:

(1) The deduction allowed by Section 169 of the Internal Revenue Code shall be allowed only with respect to facilities located in this state.

(2) The "state certifying authority," as defined in Section 169(d)(2) of the Internal Revenue Code, means the State Air Resources Board, in the case of air pollution, and the State Water Resources Control Board, in the case of water pollution.

SEC. 29. Section 17268 of the Revenue and Taxation Code is amended to read:

17268. (a) For each taxable year beginning on or after January 1, 1995, a taxpayer may elect to treat 40 percent of the cost of any Section 17268 property as an expense that is not chargeable to the capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the taxpayer places the Section 17268 property in service.

(b) In the case of a husband or wife filing separate returns for a taxable year in which a spouse is entitled to the deduction under subdivision (a), the applicable amount shall be equal to 50 percent of the amount otherwise determined under subdivision (a).

(c) (1) An election under this section for any taxable year shall meet both of the following requirements:

(A) Specify the items of Section 17268 property to which the election applies and the portion of the cost of each of those items that is to be taken into account under subdivision (a).

(B) Be made on the taxpayer's return of the tax imposed by this part for the taxable year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) (1) For purposes of this section, "Section 17268 property" means any recovery property that is each of the following:

(A) Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code).

(B) Purchased by the taxpayer for exclusive use in a trade or business conducted within a LAMBRA.

(C) Purchased before the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if both of the following apply:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code (but, in applying Section 267(b) and Section 267(c) of the Internal Revenue Code for purposes of this section, Section 267(c)(4) of the Internal Revenue Code shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants).

(B) The basis of the property in the hands of the person acquiring it is not determined by either of the following:

(i) In whole or in part by reference to the adjusted basis of the property in the hands of the person from whom acquired.

(ii) Under Section 1014 of the Internal Revenue Code, relating to basis of property acquired from a decedent.

(3) For purposes of this section, the cost of property does not include that portion of the basis of the property that is determined

by reference to the basis of other property held at any time by the person acquiring the property.

(4) This section shall not apply to estates and trusts.

(5) This section shall not apply to any property for which the taxpayer may not make an election for the taxable year under Section 179 of the Internal Revenue Code because of the provisions of Section 179(d) of the Internal Revenue Code.

(6) In the case of a partnership, the dollar limitation in subdivision (f) shall apply at the partnership level and at the partner level.

(7) This section shall not apply to any property described in Section 168(f) of the Internal Revenue Code, relating to property to which Section 168 of the Internal Revenue Code does not apply.

(e) For purposes of this section:

(1) "LAMBRA" means a local agency military base recovery area designated in accordance with the provisions of Section 7114 of the Government Code.

(2) "Taxpayer" means a taxpayer that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(f) The aggregate cost of all Section 17268 property that may be taken into account under subdivision (a) for any taxable year shall

not exceed the following applicable amounts for the taxable year of the designation of the relevant LAMBRA and taxable years thereafter:

	The applicable amount is:
Taxable year of designation	$100,000
1st taxable year thereafter	100,000
2nd taxable year thereafter	75,000
3rd taxable year thereafter	75,000
Each taxable year thereafter	50,000

(g) This section shall apply only to property that is used exclusively in a trade or business conducted within a LAMBRA.

(h) (1) Any amounts deducted under subdivision (a) with respect to property that ceases to be used in the trade or business within a LAMBRA at any time before the close of the second taxable year after the property was placed in service shall be included in income for that year.

(2) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (e), then the amount of the deduction previously claimed shall be added to the taxpayer's taxable income for the taxpayer's second taxable year.

(i) Any taxpayer who elects to be subject to this section shall not be entitled to claim for the same property the deduction under Section 179 of the Internal Revenue Code, relating to an election to expense certain depreciable business assets.

SEC. 30. Section 17270 of the Revenue and Taxation Code is amended to read:

17270. (a) For purposes of Section 162(a)(2) of the Internal Revenue Code, relating to travel expenses, all of the following shall apply:

(1) The place of residence of a member of the Legislature within the district represented shall be considered the tax home.

(2) The provisions of Section 162(h) of the Internal Revenue Code, relating to state legislators' travel expenses away from home, shall not be applied.

(b) The provisions of Section 280C(a) of the Internal Revenue Code (relating to rule for employment credits) shall not apply.

(c) Section 280C(c)(3)(B) of the Internal Revenue Code is modified to refer to Section 17041 in lieu of Section 11(b)(1) of the Internal Revenue Code.

SEC. 31. Section 17274 of the Revenue and Taxation Code is amended to read:

17274. (a) Notwithstanding any other provisions in this part to the contrary, no deduction shall be allowed for interest, taxes,

depreciation, or amortization paid or incurred in the taxable year with respect to substandard housing located in this state, except as provided in subdivision (e).

(b) "Substandard housing" means occupied dwellings from which the taxpayer derives rental income or unoccupied or abandoned dwellings for which both of the following apply:

(1) Either of the following occurs:

(A) For occupied dwellings from which the taxpayer derives rental income, a state or local government regulatory agency has determined that the housing violates state law or local codes dealing with health, safety, or building.

(B) For dwellings that are unoccupied or abandoned for at least 90 days, a state or local government regulatory agency has cited the housing for conditions that constitute a serious violation of state law or local codes dealing with health, safety, or building, and that constitute a threat to public health and safety.

(2) Either of the following occurs:

(A) After written notice of violation by the regulatory agency, specifying the applicability of this section, the housing has not been brought to a condition of compliance within six months after the date of the notice or the time prescribed in the notice, whichever period is later.

(B) Good faith efforts for compliance have not been commenced, as determined by the regulatory agency.

"Substandard housing" also means employee housing that has not, within 30 days of the date of the written notice of violation or the date for compliance prescribed in the written notice of violation, been brought into compliance with the conditions stated in the written notice of violation of the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code) issued by the enforcement agency that specifies the application of this section. The regulatory agency may, for good cause shown, extend the compliance date prescribed in a violation notice.

(c) (1) When the period specified in paragraph (2) of subdivision (b) has expired without compliance, the regulatory agency shall mail to the taxpayer a notice of noncompliance. The notice of noncompliance shall be in a form and shall include information prescribed by the Franchise Tax Board, shall be mailed by certified mail to the taxpayer at the taxpayer's last known address, and shall advise the taxpayer of (A) an intent to notify the Franchise Tax Board of the noncompliance within 10 days unless an appeal is filed, (B) where an appeal may be filed, and (C) a general description of the tax consequences of the filing with the Franchise Tax Board. Appeals shall be made to the same body and in the same manner as appeals from other actions of the regulatory agency. If no appeal is made within 10 days or if after disposition of the appeal the regulatory agency is sustained, the regulatory agency shall notify, in writing, the Franchise Tax Board of the noncompliance.

(2) The notice of noncompliance shall contain the legal description or the lot and block numbers of the real property, the assessor's parcel number, and the name of the owner of record as shown on the latest equalized assessment roll. In addition, the regulatory agency shall, at the same time as notification of the notice of noncompliance is sent to the Franchise Tax Board, record a copy of the notice of noncompliance in the office of the recorder for the county in which the substandard housing is located that includes a statement of tax consequences that may be determined by the Franchise Tax Board. However, the failure to record a notice with the county recorder does not relieve the liability of any taxpayer nor does it create any liability on the part of the regulatory agency.

(3) The regulatory agency may charge the taxpayer a fee in an amount not to exceed the regulatory agency's costs incurred in recording any notice of noncompliance or issuing any release of that notice. The notice of compliance shall be recorded and shall serve to expunge the notice of noncompliance. The notice of compliance shall contain the same recording information required for the notice of noncompliance. No deduction by the taxpayer, or any other taxpayer who obtains title to the property subsequent to the recordation of the notice of noncompliance, shall be allowed for the items provided in subdivision (a) from the date of the notice of noncompliance until the date the regulatory agency determines that the substandard housing has been brought to a condition of compliance. The regulatory agency shall mail to the Franchise Tax Board and the taxpayer a notice of compliance, which notice shall be in the form and include the information prescribed by the Franchise Tax Board. In the event the period of noncompliance does not cover an entire taxable year, the deductions shall be denied at the rate of $^1/_{12}$ for each full month during the period of noncompliance.

(4) If the property is owned by more than one owner or if the recorded title is in the name of a fictitious owner, the notice requirements provided in subdivision (b) and this subdivision shall be satisfied for each owner if the notices are mailed to one owner or to the fictitious name owner at the address appearing on the latest available property tax bill. However, notices made pursuant to this subdivision do not relieve the regulatory agency from furnishing taxpayer identification information required to implement this section to the Franchise Tax Board.

(d) For the purposes of this section, a notice of noncompliance shall not be mailed by the regulatory agency to the Franchise Tax Board if any of the following occur:

(1) The housing was rendered substandard solely by reason of earthquake, flood, or other natural disaster except where the condition remains for more than three years after the disaster.

(2) The owner of the substandard housing has secured financing to bring the housing into compliance with those laws or codes that have been violated, causing the housing to be classified as

substandard, and has commenced repairs or other work necessary to bring the housing into compliance.

(3) The owner of substandard housing that is not within the meaning of housing accommodation as defined by subdivision (d) of Section 35805 of the Health and Safety Code has done both of the following:

(A) Attempted to secure financing to bring the housing into compliance with those laws or codes that have been violated, causing the housing to be classified as substandard.

(B) Been denied that financing solely because the housing is located in a neighborhood or geographical area in which financial institutions do not provide financing for rehabilitation of any of that type of housing.

(e) This section does not apply to deductions from income derived from property rendered substandard solely by reason of a change in applicable state or local housing standards unless the violations cause substantial danger to the occupants of the property, as determined by the regulatory agency which has served notice of violation pursuant to subdivision (b).

(f) The owner of substandard housing found to be in noncompliance shall, upon total or partial divestiture of interest in the property, immediately notify the regulatory agency of the name and address of the person or persons to whom the property has been sold or otherwise transferred and the date of the sale or transference.

(g) By July 1 of each year, the regulatory agency shall report to the appropriate legislative body of its jurisdiction all of the following information, for the preceding calendar year, regarding its activities to secure code enforcement, which shall be public information:

(1) The number of written notices of violation issued for substandard housing under subdivision (b).

(2) The number of violations complied with within the period prescribed in subdivision (b).

(3) The number of notices of noncompliance issued pursuant to subdivision (c).

(4) The number of appeals from those notices pursuant to subdivision (c).

(5) The number of successful appeals by owners.

(6) The number of notices of noncompliance mailed to the Franchise Tax Board pursuant to subdivision (c).

(7) The number of cases in which a notice of noncompliance was not sent pursuant to subdivision (d).

(8) The number of extensions for compliance granted pursuant to subdivision (b) and the mean average length of the extensions.

(9) The mean average length of time from the issuance of a notice of violation to the mailing of a notice of noncompliance to the Franchise Tax Board where the notice is actually sent to the Franchise Tax Board.

(10) The number of cases where compliance is achieved after a notice of noncompliance has been mailed to the Franchise Tax Board.

(11) The number of instances of disallowance of tax deductions by the Franchise Tax Board resulting from referrals made by the regulatory agency. This information may be filed in a supplemental report in succeeding years as it becomes available.

(h) The provisions of this section relating to substandard housing consisting of abandoned or unoccupied dwellings do not apply to any lender engaging in a "federally related transaction," as defined in Section 11302 of the Business and Professions Code, who acquires title through judicial or nonjudicial foreclosure, or accepts a deed in lieu of foreclosure. The exception provided in this subdivision covers only substandard housing consisting of abandoned or unoccupied dwellings involved in the federally related transaction.

SEC. 32. Section 17275.6 of the Revenue and Taxation Code is repealed.

SEC. 33. Section 17276.5 of the Revenue and Taxation Code is amended to read:

17276.5. (a) For each taxable year beginning on or after January 1, 1995, the term "qualified taxpayer" as used in Section 17276.1 includes a taxpayer engaged in the conduct of a trade or business within a LAMBRA. For purposes of this subdivision, all of the following shall apply:

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following taxable year that ends before the LAMBRA expiration date or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(3) "Taxpayer" means a person or entity that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state. For purposes of this paragraph:

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be

zero. The deduction shall be allowed only if the taxpayer has a net increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B), the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(4) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Loss shall be apportioned to a LAMBRA by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(B) "The LAMBRA" shall be substituted for "this state."

(5) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA.

(6) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the LAMBRA. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the LAMBRA in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this subdivision as follows:

(A) Business income shall be apportioned to a LAMBRA by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this clause:

(i) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the LAMBRA during the taxable year, and the denominator of which is the average value of all the

taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(ii) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the LAMBRA during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(B) If a loss carryover is allowable pursuant to this section for any taxable year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing the limitation specified in paragraph (5) and allowing a net operating loss deduction.

(7) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(b) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections shall, for the taxable year of the net operating loss and any taxable year to which that net operating loss may be carried, designate on the original return filed for each year the section that applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to qualify under this section and either Section 17276.2, 17276.4, or 17276.6 as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) Notwithstanding Section 17276, the amount of the loss determined under this section or Section 17276.2, 17276.4, or 17276.6 shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (b) shall be included in the election under Section 17276.1.

(e) This section shall apply to taxable years beginning on or after January 1, 1998.

SEC. 34. Section 17287 of the Revenue and Taxation Code is amended to read:

17287. Section 269A of the Internal Revenue Code is modified by substituting "California Personal Income Tax" for "Federal income tax."

SEC. 36. Section 17330 of the Revenue and Taxation Code is repealed.

SEC. 37. Section 17551 of the Revenue and Taxation Code is amended to read:

17551. (a) Subchapter E of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to accounting periods and methods of accounting, shall apply, except as otherwise provided.

(b) Section 444(c)(1) of the Internal Revenue Code, relating to effect of election, shall not apply.

SEC. 38. Section 17551.5 of the Revenue and Taxation Code is repealed.

SEC. 39. Section 17552 of the Revenue and Taxation Code is amended to read:

17552. (a) Notwithstanding Section 17565, a return for a period of less than 12 months shall also be made when the Franchise Tax Board terminates the taxpayer's taxable year under Section 19082 (relating to tax in jeopardy).

(b) Section 443(c) of the Internal Revenue Code, relating to adjustment in deduction for personal exemption, is modified by substituting the phrase "the credit allowed under Section 17054" for the phrase "the exemptions allowed as a deduction under section 151 (and any deduction in lieu thereof)."

SEC. 40. Section 17553 of the Revenue and Taxation Code is amended to read:

17553. Section 454(c) of the Internal Revenue Code, relating to matured United States Savings Bonds, shall not apply.

SEC. 41. Section 17563 of the Revenue and Taxation Code is repealed.

SEC. 42. Section 17639 of the Revenue and Taxation Code is amended to read:

17639. For purposes of subdivision (a) of Section 17637, a bond, debenture, note, or certificate or other evidence of indebtedness (hereinafter in this section referred to as "obligation") acquired by a trust described in Section 401(a) of the Internal Revenue Code shall not be treated as a loan made without the receipt of adequate security if—

(a) The obligation is acquired—

(1) On the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the trust than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(2) From an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(3) Directly from the issuer, at a price not less favorable to the trust than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(b) Immediately following acquisition of the obligation—

(1) Not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by the trust, and

(2) At least 50 percent of the aggregate amount referred to in paragraph (1) is held by persons independent of the issuer; and

(c) Immediately following acquisition of the obligation, not more than 25 percent of the assets of the trust is invested in obligations of persons described in Section 17637.

SEC. 43. Section 17640 of the Revenue and Taxation Code is amended to read:

17640. Subdivision (a) of Section 17637 shall not apply to a loan made by a trust described in Section 401(a) of the Internal Revenue Code to the employer (or to a renewal of such a loan or, if the loan is repayable upon demand, to a continuation of such a loan) if the loan bears a reasonable rate of interest, and if (in the case of a making or renewal)—

(a) The employer is prohibited (at the time of the making or renewal) by any law of the United States or regulation thereunder from directly or indirectly pledging, as security for such a loan, a particular class or classes of his assets the value of which (at that time) represents more than one-half of the value of all his or her assets;

(b) The making or renewal, as the case may be, is approved in writing as an investment that is consistent with the exempt purposes of the trust by a trustee who is independent of the employer, and no other similar trustee had previously refused to give that written approval; and

(c) Immediately following the making or renewal, as the case may be, the aggregate amount loaned by the trust to the employer, without the receipt of adequate security, does not exceed 25 percent of the value of all the assets of the trust.

(d) For purposes of subdivision (b), the term "trustee" means, with respect to any trust for which there is more than one trustee who is independent of the employer, a majority of those independent trustees. For purposes of subdivision (c), the determination as to whether any amount loaned by the trust to the employer is loaned without the receipt of adequate security shall be made without regard to Section 17639.

SEC. 44. Section 17651 of the Revenue and Taxation Code is amended to read:

17651. (a) There is hereby imposed for each taxable year on the unrelated business taxable income (as defined in Section 23732) of every trust a tax computed as provided in subdivision (e) of Section 17041. In making that computation for purposes of this section, the term "taxable income" as used in subdivisions (a) and (e) of Section 17041 shall be read as "unrelated business taxable income" as defined in Section 23732.

(b) The tax imposed by subdivision (a) shall apply in the case of any trust which is exempt, except as provided in this article, from taxation under this part by reason of Section 17631 and which, if it were not for such exemption, would be subject to Chapter 9

(commencing with Section 17731) relating to estates, trusts, beneficiaries, and decedents.

SEC. 45. Section 17671 of the Revenue and Taxation Code is amended to read:

17671. Section 584 of the Internal Revenue Code, relating to common trust funds, shall apply, except as otherwise provided.

SEC. 46. Section 17732 of the Revenue and Taxation Code is amended to read:

17732. Section 642(b) of the Internal Revenue Code, relating to deduction for personal exemption, shall not apply.

SEC. 47. Section 17851 of the Revenue and Taxation Code is amended to read:

17851. Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to partners and partnerships, shall apply, except as otherwise provided.

SEC. 48. Section 17852 of the Revenue and Taxation Code is repealed.

SEC. 49. Section 17853 of the Revenue and Taxation Code is amended to read:

17853. Section 703(a)(2) of the Internal Revenue Code is modified to additionally provide that the deduction for taxes provided in Section 164(a) of the Internal Revenue Code with respect to taxes, described in Section 18006, paid to another state shall not be allowed to the partnership.

SEC. 50. Section 17857 of the Revenue and Taxation Code is amended to read:

17857. Section 751(e) of the Internal Revenue Code, relating to the limitation on tax attributable to deemed sales of Section 1248 stock, shall not apply.

SEC. 51. Section 17859 of the Revenue and Taxation Code is repealed.

SEC. 52. Section 17860 of the Revenue and Taxation Code is repealed.

SEC. 53. Section 17935 of the Revenue and Taxation Code is amended to read:

17935. (a) For each taxable year beginning on or after January 1, 1997, every limited partnership doing business in this state (as defined by Section 23101) and required to file a return under Section 18633 shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in Section 23153.

(b) (1) In addition to any limited partnership that is doing business in this state and therefore is subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, every limited partnership that has executed, acknowledged, and filed a certificate of limited partnership with the Secretary of State pursuant to Section 15621 of the Corporations Code, and every foreign limited partnership that has registered with the Secretary of

State pursuant to Section 15692 of the Corporations Code, shall pay annually the tax prescribed in subdivision (a). The tax shall be paid for each taxable year, or part thereof, until a certificate of cancellation is filed on behalf of the limited partnership with the office of the Secretary of State pursuant to Section 15623 or 15696 of the Corporations Code.

(2) If a taxpayer files a return with the Franchise Tax Board that is designated its final return, that board shall notify the taxpayer that the minimum tax is due annually until a certificate of cancellation is filed with the Secretary of State pursuant to Section 15623 or 15696 of the Corporations Code.

(c) The tax imposed under this section shall be due and payable on the date the return is required to be filed under former Section 18432 or 18633.

(d) For purposes of this section, "limited partnership" means any partnership formed by two or more persons under the laws of this state or any other jurisdiction and having one or more general partners and one or more limited partners.

(e) Notwithstanding subdivision (b), any limited partnership that ceased doing business prior to January 1, 1997, filed a final return with the Franchise Tax Board for a taxable year ending before January 1, 1997, filed a certificate of dissolution with the Secretary of State pursuant to Section 15623 of the Corporations Code prior to January 1, 1997, and files a certificate of cancellation with the Secretary of State pursuant to that section of the Corporations Code at any time during the period from the date of enactment of the act adding this subdivision to the date that is not later than 60 days after the date of the mailing of a notice of proposed deficiency assessment of tax or the date of the mailing of a notice of tax due (whichever is applicable) for any period following the date the certificate of dissolution was filed with the Secretary of State, shall not be subject to the tax imposed by this section for the period following the date the certificate of dissolution was filed with the Secretary of State.

SEC. 54. Section 18601 of the Revenue and Taxation Code is amended to read:

18601. (a) Except as provided in subdivision (b) or (c), every taxpayer subject to the tax imposed by Part 11 (commencing with Section 23001) shall, on or before the 15th day of the third month following the close of its income year, transmit to the Franchise Tax Board a return in a form prescribed by it, specifying for the income year, all the facts as it may by rule, or otherwise, require in order to carry out this part. A tax return, disclosing net income for any income year, filed pursuant to Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501) of Part 11 shall be deemed filed pursuant to the proper chapter of Part 11 for the same income period, if the chapter under which the return is filed is determined erroneous.

(b) In the case of cooperative associations described in Section 24404, returns shall be filed on or before the 15th day of the ninth month following the close of its income year.

(c) In the case of taxpayers required to file a return for a short period under Section 24634, the due date for the short period return shall be the same as the due date of the federal tax return that includes the net income of the taxpayer for that short period, or the due date specified in subdivision (a) if no federal return is required to be filed that would include the net income for that short period.

(d) For income years beginning on or after January 1, 1997, each "S corporation" required to file a return under subdivision (a) for any income year shall, on or before the day on which the return for the income year was filed, furnish each person who is a shareholder at any time during the income year a copy of the information shown on the return.

(e) For taxable or income years beginning on or after January 1, 1997:

(1) A shareholder of an "S corporation" shall, on the shareholder's return, treat a Subchapter S item in a manner that is consistent with the treatment of the item on the corporate return.

(2) (A) In the case of any Subchapter S item, paragraph (1) shall not apply to that item if both of the following occur:

(i) Either of the following occurs:

(I) The corporation has filed a return, but the shareholder's treatment of the item on the shareholder's return is, or may be, inconsistent with the treatment of the item on the corporate return.

(II) The corporation has not filed a return.

(ii) The shareholder files with the Franchise Tax Board a statement identifying the inconsistency.

(B) A shareholder shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a Subchapter S item if the shareholder does both of the following:

(i) Demonstrates to the satisfaction of the Franchise Tax Board that the treatment of the Subchapter S item on the shareholder's return is consistent with the treatment of the item on the schedule furnished to the shareholder by the corporation.

(ii) Elects to have this paragraph apply with respect to that item.

(3) In any case described in subclause (I) of clause (i) of subparagraph (A) of paragraph (2), and in which the shareholder does not comply with clause (ii) of subparagraph (A) of paragraph (2), any adjustment required to make the treatment of the items by the shareholder consistent with the treatment of the items on the corporate return shall be treated as arising out of a mathematical error and assessed and collected under Section 19051.

(4) For purposes of this subdivision, "Subchapter S item" means any item of an "S corporation" to the extent provided by regulations that, for purposes of Part 10 (commencing with Section 17001) or this

part, the item is more appropriately determined at the corporation level than at the shareholder level.

(5) The penalties imposed under Article 7 (commencing with Section 19131) of Chapter 4 shall apply in the case of a shareholder's negligence in connection with, or disregard of, the requirements of this section.

SEC. 54.5. Section 18604 of the Revenue and Taxation Code is amended to read:

18604. (a) The Franchise Tax Board may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by Part 11 (commencing with Section 23001), in the manner and form as the Franchise Tax Board may determine. No extension or extensions shall aggregate more than seven months from the due date for filing the return.

(b) An extension of time granted pursuant to this section is not an extension of time for payment of tax required to be paid on or before the due date of the return without regard to extension. Underpayment of tax penalties shall be imposed as provided by law without regard to any extension granted under this section.

SEC. 55. Section 18605 of the Revenue and Taxation Code is repealed.

SEC. 56. Section 18622 of the Revenue and Taxation Code is amended to read:

18622. (a) If any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year of any taxpayer is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in gross income or deductions, that taxpayer shall report each change or correction, or the results of the renegotiation, within six months after the date of each final federal determination of the change or correction or renegotiation, or as required by the Franchise Tax Board, and shall concede the accuracy of the determination or state wherein it is erroneous. For any individual subject to tax under Part 10 (commencing with Section 17001), changes or corrections need not be reported unless they increase the amount of tax payable under Part 10 (commencing with Section 17001) for any year.

(b) Any taxpayer filing an amended return with the Commissioner of Internal Revenue shall also file within six months thereafter an amended return with the Franchise Tax Board which shall contain any information as it shall require. For any individual subject to tax under Part 10 (commencing with Section 17001), an amended return need not be filed unless the change therein would increase the amount of tax payable under Part 10 (commencing with Section 17001) for any year.

(c) Notification of a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other

competent authority, or renegotiation of a contract or subcontract with the United States that results in a change in any item or the filing of an amended return must be sufficiently detailed to allow computation of the resulting California tax change and shall be reported in the form and manner as prescribed by the Franchise Tax Board.

(d) For purposes of this part, the date of each final federal determination shall be the date on which each adjustment or resolution resulting from an Internal Revenue Service examination is assessed pursuant to Section 6203 of the Internal Revenue Code.

SEC. 57. Section 18662 of the Revenue and Taxation Code is amended to read:

18662. (a) The Franchise Tax Board may, by regulation, require any person, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and any officer or department of the state or any political subdivision or agency of the state, or any city organized under a freeholder's charter, or any political body not a subdivision or agency of the state), having the control, receipt, custody, disposal, or payment of items of income specified in subdivision (b), to withhold an amount, determined by the Franchise Tax Board to reasonably represent the amount of tax due when the items of income are included with other income of the taxpayer, and to transmit the amount withheld to the Franchise Tax Board at the time as it may designate.

(b) The items of income referred to in subdivision (a) are interest, dividends, rents, prizes and winnings, premiums, annuities, emoluments, compensation for services, including bonuses, partnership income or gains, and other fixed or determinable annual or periodical gains, profits, and income.

(c) The Franchise Tax Board may authorize the tax under subdivision (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(d) Any person failing to withhold from any payments any amounts required by subdivision (a) to be withheld is liable for the amount withheld or the amount of taxes due from the person to whom the payments are made to an extent not in excess of the amounts required to be withheld, whichever is greater, unless it is shown that the failure to withhold is due to reasonable cause.

(e) (1) In the case of any disposition of a California real property interest by a person (but not a partnership as determined in accordance with Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code, or a corporation), when the return required to be filed with the Secretary of the Treasury under Section 6045(e) of the Internal Revenue Code indicates, or the authorization for the disbursement of the transaction's funds instructs, that the funds be disbursed either to a transferor with a last known street address outside the boundaries of this state at the time of the transfer of the

title to the California real property or to the financial intermediary of the transferor, the transferee shall be required to withhold an amount equal to $3^1/_3$ percent of the sales price of the California real property conveyed.

(2) In the case of any disposition of a California real property interest by a corporation, the transferee shall be required to withhold an amount equal to $3^1/_3$ percent of the sales price of the California real property conveyed, if the corporation immediately after the transfer of the title to the California real property has no permanent place of business in California. For purposes of this subdivision, a corporation has no permanent place of business in California if all of the following apply:

(A) It is not organized and existing under the laws of California.

(B) It does not qualify with the office of the Secretary of State to transact business in California.

(C) It does not maintain and staff a permanent office in California.

(3) Notwithstanding any other provision of this subdivision, all of the following shall apply:

(A) No transferee shall be required to withhold any amount under this subdivision if the sales price of the California real property conveyed does not exceed one hundred thousand dollars ($100,000).

(B) No transferee shall be required to withhold any amount under this subdivision unless written notification of the withholding requirements of this subdivision has been provided by the real estate escrow person.

(C) No transferee shall be required to withhold under this subdivision when the transferor is a bank acting as trustee other than a trustee of a deed of trust.

(D) No transferee shall be required to withhold under this subdivision when the transferee is a corporate beneficiary under a mortgage or beneficiary under a deed of trust and the California real property is acquired in judicial or nonjudicial foreclosure or by a deed in lieu of foreclosure.

(E) No transferee shall be required to withhold any amount under this subdivision if the transferee, in good faith and based on all the information of which he or she has knowledge, relies on a written certificate executed by the transferor, certifying under penalty of perjury, any of the following:

(i) That the transferor is a resident of California.

(ii) That the California real property being conveyed is the principal residence of the transferor, within the meaning of Section 121 of the Internal Revenue Code.

(iii) The transferor, if a corporation, has a permanent place of business in California.

(4) (A) At the request of the transferor, the Franchise Tax Board may authorize that a reduced amount or no amount be withheld under this subdivision if the Franchise Tax Board determines that to substitute a reduced amount or no amount shall not jeopardize the

collection of tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). If the transferor provides documentation sufficient for the Franchise Tax Board to determine the actual gain required to be recognized on the transaction, the Franchise Tax Board may authorize a reduced amount based on the amount of the gain, as determined, which will result in a sum which is substantially equivalent to the amount of tax reasonably estimated to be due under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) from the inclusion of the gain in the gross amount of the transferor.

(B) Within 45 days after receiving a request that a reduced amount or no amount be withheld, the Franchise Tax Board shall either authorize a reduced amount or no amount, or deny the request.

(C) In the case where the parties to the transaction are requesting that a reduced amount or no amount be withheld and the response by the Franchise Tax Board to the request has not been received at the time title to the California real property is transferred, the parties may direct the real estate escrow person to hold in trust for 45 days the amount required to be withheld under this subdivision. The parties shall instruct the real estate escrow person that at the end of 45 days the real estate escrow person shall remit the amount withheld to the Franchise Tax Board in accordance with this section, unless the Franchise Tax Board has authorized that a reduced amount or no amount be withheld.

(5) Amounts withheld and payments made in accordance with this subdivision shall be reported and remitted to the Franchise Tax Board in the form and at the time as the Franchise Tax Board shall determine.

(6) "California real property interest" means an interest in real property located in California and defined in Section 897(c)(1)(A)(i) of the Internal Revenue Code.

(7) For purposes of this subdivision, "financial intermediary" means an agent for the purpose of receiving and transferring funds to a principal.

(8) For purposes of this subdivision, "real estate escrow person" means any of the following persons involved in the real estate transaction:

(A) The person (including any attorney, escrow company, or title company) responsible for closing the transaction.

(B) If no other person described in subparagraph (A) is responsible for closing the transaction, then any other person who receives and disburses the consideration or value for the interest or property conveyed.

(9) (A) Unless the real estate escrow person provides "assistance," it shall be unlawful for any real estate escrow person to charge any customer for complying with the requirements of this subdivision.

(B) For purposes of this paragraph, "assistance" includes, but is not limited to, helping the parties clarify with the Franchise Tax Board the issue of whether withholding is required under this subdivision, helping the parties request that the Franchise Tax Board authorize a reduced amount or no amount be withheld under this subdivision, or, upon request of the parties, withholding an amount under this subdivision and remitting the amount to the Franchise Tax Board.

(C) For purposes of this paragraph, "assistance" does not include providing the written notification of the withholding requirements of this subdivision, or providing the certification that either:

(i) The transferor is a resident of California or that the California real property being conveyed is the transferor's principal residence.

(ii) The transferor, if a corporation, has a permanent place of business in California.

(D) In a case where the real estate escrow person provides "assistance" in complying with the withholding requirements of this subdivision, it shall be unlawful for the real estate escrow person to charge any customer a fee that exceeds forty-five dollars ($45).

(10) For purposes of this subdivision, "sales price" means the sum of all of the following:

(A) The cash paid, or to be paid. The term "cash paid, or to be paid" does not include stated or unstated interest or original issue discount (as determined by Sections 1271 to 1275, inclusive, of the Internal Revenue Code).

(B) The fair market value of other property transferred, or to be transferred.

(C) The outstanding amount of any liability assumed by the transferee or to which the California real property interest is subject immediately before and after the transfer.

(f) Whenever any person has withheld any amount pursuant to this section, the amount so withheld shall be held in trust for the State of California. The amount of the fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(g) Withholding shall not be required under this section with respect to wages, salaries, fees, or other compensation paid by a corporation for services performed in California for that corporation to a nonresident corporate director for director services, including attendance at a board of directors' meeting.

(h) In the case of any payment described in subdivision (g), the person making the payment shall do each of the following:

(1) File a return with the Franchise Tax Board at the time and in the form and manner specified by the Franchise Tax Board.

(2) Provide the payee with a statement at the time and in the form and manner specified by the Franchise Tax Board.

SEC. 58. Section 18711 of the Revenue and Taxation Code is amended to read:

18711. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the State Children's Trust Fund.

(b) The contribution shall be in full dollar amounts and may be made individually by each signatory on the joint return.

(c) A designation under subdivision (a) shall be made for any taxable year on the initial return for that taxable year, and once made shall be irrevocable. In the event that payments and credits reported on the return, together with any other credits associated with the taxpayer's account do not exceed the tax liability, if any, shown thereupon, the return shall be treated as though no designation has been made.

(d) The Franchise Tax Board shall revise the form of the return to include a space labeled the "State Children's Trust Fund for the Prevention of Child Abuse" to allow for the designation permitted under subdivision (a).

(e) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 59. Section 18721 of the Revenue and Taxation Code is amended to read:

18721. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Fund for Senior Citizens established by Section 18722 to be used to conduct the sessions of the California Senior Legislature and to support its ongoing activities on behalf of older persons.

(b) The contribution shall be in full dollar amounts and may be made individually by each signatory on the joint return.

(c) A designation under subdivision (a) shall be made for any taxable year on the initial return for that taxable year, and once made shall be irrevocable.

In the event that payments and credits reported on the return, together with any other credits associated with the individual's account do not exceed the tax liability, if any, shown thereupon, the return shall be treated as though no designation has been made.

(d) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "California Fund for Senior Citizens" to allow for the designation permitted under subdivision (a). The forms shall also include in the instructions the information that the contribution may be in the amount of one dollar ($1) or more and that the contribution will be used to conduct the sessions of the California Senior Legislature and to support its ongoing activities on behalf of older persons.

(e) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 60. Section 18741 of the Revenue and Taxation Code is amended to read:

18741. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund.

(b) The contribution shall be in full dollar amounts and may be made individually by each signatory on a joint return.

(c) A designation under subdivision (a) shall be made for any taxable year on the initial return for that taxable year, and once made shall be irrevocable. If payments and credits reported on the return, together with any other credits associated with the individual's account, do not exceed the tax liability, if any, shown thereon, the return shall be treated as though no designation has been made.

(d) The Franchise Tax Board shall revise the form of the return to include a space labeled "Rare and Endangered Species Preservation Program" to allow for the designation permitted under subdivision (a).

(e) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 61. Section 18763 of the Revenue and Taxation Code is amended to read:

18763. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Alzheimer's Disease and Related Disorders Research Fund, that is established by Section 18764.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on the joint return.

(c) A designation under subdivision (a) shall be made for any taxable year on the individual 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 individual's account, do not exceed the individual's tax liability, the return shall be treated as though no designation has been made.

(d) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "Alzheimer's Disease/Related Disorders Fund" to allow for the designation permitted under subdivision (a). The forms shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used to conduct research relating to the cure and treatment of Alzheimer's disease.

(e) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 62. Section 18782 of the Revenue and Taxation Code is amended to read:

18782. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the D.A.R.E. California (Drug Abuse Resistance Education) Fund, which is established by Section 18783. 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.

(d) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "D.A.R.E. California (Drug Abuse Resistance Education) 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 for purposes of drug abuse resistance education.

(e) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 63. Section 18793 of the Revenue and Taxation Code is amended to read:

18793. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Breast Cancer Research Fund, which is established by Section 18794.

(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 individual 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 individual's account, do not exceed the individual's liability, the return shall be treated as though no designation has been made.

(d) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "California Breast Cancer Research 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 conduct research relating to the cure, screening, and treatment of breast cancer.

(e) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 64. Section 18801 of the Revenue and Taxation Code is amended to read:

18801. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Firefighters' Memorial Fund, which is established by Section 18802. 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.

(d) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "California Firefighters' Memorial 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 construct a memorial to California firefighters on the grounds of the State Capitol.

(e) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 65. Section 18812 of the Revenue and Taxation Code is amended to read:

18812. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Public School Library Protection Fund, which is established by Section 18813. 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.

(d) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "California Public School Library Protection 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 purchase books and library media technology for schools as described in Sections 18177 and 18178 of the Education Code.

(e) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 66. Section 18821 of the Revenue and Taxation Code is amended to read:

18821. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Mexican American Veterans' Memorial Beautification and Enhancement Account in the General Fund established by Section 1340 of the Military and Veterans Code. That designation is to be used as a voluntary checkoff on the tax return only after the Franchise Tax Board has been notified in writing that construction of the veterans' memorial has commenced. If the Franchise Tax Board has been notified in writing by the Veterans' Memorial Commission at any time during the taxable year that construction has commenced, the California Mexican American Veterans' Memorial Beautification and Enhancement Account shall first appear for contribution on the tax return filed for the taxable year beginning on or after January 1 of that year.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on the joint return.

(c) A designation under subdivision (a) shall be made on the initial return for that taxable year, and once made shall be irrevocable. In the event that payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made.

(d) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "California Mexican American Veterans' Memorial" to allow for the designation permitted under subdivision (a). The forms shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used to beautify and enhance an existing memorial.

(e) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 67. Section 18841 of the Revenue and Taxation Code is amended to read:

18841. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Military Museum Fund, which is established by Section 18842. 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 by the signatory on an individual return or 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 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. If the amount available for designation is insufficient to satisfy the total amount designated, the amount designated shall be adjusted to correspond to the amount available for designation.

(d) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "California Military Museum 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 operate the California Military Museum. It is the intent of the Legislature that tax returns for taxable years during which this article remains in effect shall include a space for the California Military Museum Fund.

(e) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 68. Section 18851 of the Revenue and Taxation Code is amended to read:

18851. (a) An individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the Emergency Food Assistance Program Fund, which is established by Section 18852. That designation is to be used as a voluntary checkoff on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on a joint return.

(c) A designation shall be made for any taxable year on the initial return for that taxable year and once made is irrevocable. If payments and credits reported on the return, together with any other credits associated with the taxpayer's account do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made.

(d) The Franchise Tax Board shall revise the form of the return to include a space labeled the "Emergency Food Assistance Program Fund" to allow for the designation permitted. The form shall also include in the instructions information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used for the Emergency Food Assistance Program.

(e) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 69. Section 18871 of the Revenue and Taxation Code is amended to read:

18871. In implementing this chapter, all of the following requirements shall apply:

(a) Unless otherwise specifically required by law, each voluntary contribution fund or account established by this chapter shall be included on the forms of the return through the taxable year immediately preceding the year of repeal of the article establishing that voluntary contribution fund or account.

(b) Notwithstanding the repeal of any article of this chapter, the voluntary contribution fund or account specified in that article shall continue in effect until December 31 of the year of the repeal of that article, and any contribution designated pursuant to that article on a timely filed initial return for the taxable year immediately preceding the date of repeal shall be transferred and disbursed, and all costs incurred by the Franchise Tax Board and Controller in connection with the transfer and disbursement of these contribution amounts shall continue to be paid, in accordance with that article as it read immediately prior to its repeal.

(c) Unless otherwise specifically required by law, a contribution made to any voluntary contribution fund or account established by this chapter shall be subject to the following provisions:

(1) In the event that no designee is specified, the contribution shall, after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and administration of contributions made under this article, be transferred to the General Fund.

(2) In the event 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.

SEC. 70. Section 19023 of the Revenue and Taxation Code is amended to read:

19023. For purposes of this article, in the case of a corporation, other than a bank or financial corporation, or an organization described in Section 23731, the term "estimated tax" means the amount which the corporation or organization described in Section 23731 estimates as the amount of the tax imposed by Part 11 (commencing with Section 23001) and the amount of its liability for the tax of each wholly owned subsidiary under Section 23800.5; but in no event shall the estimated tax of a corporation subject to the tax imposed by Article 2 (commencing with Section 23151) of Chapter 2 of Part 11 be less than the minimum tax prescribed in Section 23153.

SEC. 70.5. Section 19053 of the Revenue and Taxation Code is repealed.

SEC. 71. Section 19059 of the Revenue and Taxation Code is amended to read:

19059. (a) If a taxpayer is required by subdivision (a) of Section 18622 to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other

competent authority and does report the change or correction within six months after the final federal determination, or the Internal Revenue Service reports that change or correction within six months after the final federal determination, a notice of proposed deficiency assessment resulting from those adjustments may be mailed to the taxpayer within two years from the date when the notice is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, or within the periods provided in Section 19057, 19058, or 19065, whichever period expires later.

(b) If a taxpayer is required by subdivision (b) of Section 18622 to file an amended return and does file the return within six months of filing an amended return with the Commissioner of Internal Revenue, a notice of proposed deficiency assessment in excess of the self-assessed tax on the amended return, and resulting from the adjustments may be mailed to the taxpayer within two years from the date when the amended return is filed with the Franchise Tax Board by the taxpayer, or within the periods provided in Section 19057, 19058, or 19065, whichever period expires later.

SEC. 72. Section 19060 of the Revenue and Taxation Code is amended to read:

19060. (a) If a taxpayer fails to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or fails to file an amended return as required by Section 18622, a notice of proposed deficiency assessment resulting from the adjustment may be mailed to the taxpayer at any time.

(b) If, after the six-month period required in Section 18622, a taxpayer or the Internal Revenue Service reports a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or files an amended return as required by Section 18622, a notice of proposed deficiency assessment resulting from the adjustment may be mailed to the taxpayer within four years from the date the taxpayer or the Internal Revenue Service notifies the Franchise Tax Board of that change or correction or files that return.

SEC. 73. Section 19089 of the Revenue and Taxation Code is amended to read:

19089. (a) Every trustee in a case under Title 11 of the United States Code, receiver, assignee for the benefit of creditors or like fiduciary shall give notice of qualification as such to the Franchise Tax Board in the manner and at the time that may be required by regulations of the Franchise Tax Board. The Franchise Tax Board may by regulation provide for any exemptions from the requirements of this section that the Franchise Tax Board deems proper.

(b) If the regulations issued pursuant to this section require the giving of any notice by any fiduciary in any case under Title 11 of the United States Code, or by a receiver in any other court proceeding

to the Franchise Tax Board of qualification as such, the running of the period of limitations for mailing a notice of proposed deficiency assessment shall be suspended for the period from the date of the institution of the proceeding to a date 30 days after the date upon which the notice from the receiver or other fiduciary is received by the Franchise Tax Board; but the suspension under this section shall in no case be for a period in excess of two years.

SEC. 74. Section 19106 of the Revenue and Taxation Code is amended to read:

19106. Except as provided in Section 19111, interest shall be imposed under Section 19101 with respect to any assessable penalty, additional amount, or addition to tax imposed under this article, as follows:

(a) In the case of a penalty, additional amount, or addition to tax which, when assessed, is due and payable on notice and demand, other than a penalty imposed under Section 19131 (relating to failure to file a return on or before the due date), Section 19132 (relating to underpayment of tax), or Section 19164 (relating to imposition of the accuracy-related penalty), interest shall be imposed from the date of the notice and demand to the date of payment.

(b) In the case of a penalty, additional amount, or addition to tax which is initially assessed as a deficiency, other than a penalty imposed under Section 19131 (relating to failure to file a return on or before the due date), Section 19132 (relating to underpayment of tax), or Section 19164 (relating to imposition of the accuracy-related penalty), interest shall be imposed from the date of the notice of proposed deficiency assessment to the date of payment.

(c) In the case of a penalty or addition to tax imposed by Section 19131 (relating to failure to file a return on or before the due date), Section 19132 (relating to underpayment of tax), or Section 19164 (relating to imposition of the accuracy-related penalty), for the period that—

(1) Begins on the date on which the return of the tax with respect to which that penalty is imposed is required to be filed (including any extensions), and

(2) Ends on the date of payment of that penalty or addition to tax.

SEC. 75. Section 19145 of the Revenue and Taxation Code is amended to read:

19145. For purposes of Section 19142, the period of the underpayment shall run from the date the installment was required to be made to whichever of the following dates is the earlier:

(a) The 15th day of the third month following the close of the income year, except in the case of an organization described in Section 23731 subject to the tax imposed under Section 23731, in which case "fifth" shall be substituted for "third."

(b) With respect to any portion of the underpayment, the date on which that portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a

payment of any previous underpayment only to the extent the payment exceeds the amount of the installment determined under subdivision (a) of Section 19144 for the installment date.

SEC. 75.3. Section 19151 of the Revenue and Taxation Code is amended to read:

19151. Notwithstanding Sections 19142 to 19150, inclusive, the addition to the tax with respect to underpayment of any installment shall not be imposed on an exempt organization described in Section 23731 whose exemption is retroactively revoked unless the organization described in Section 23731 has notice that the estimated tax should have been paid. The denial of the organization's exemption application or the revocation of its exemption by the Internal Revenue Service normally satisfies the notice requirement.

SEC. 75.5. Section 19311 of the Revenue and Taxation Code is amended to read:

19311. (a) If a change or correction is made or allowed by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, a claim for credit or refund resulting from the adjustment may be filed by the taxpayer within two years from the date of the final federal determination (as defined in Section 18622), or within the period provided in Section 19306, 19307, or 19308, whichever period expires later.

(b) This section shall apply to any federal determination that becomes final on or after January 1, 1993.

SEC. 76. Section 19411 of the Revenue and Taxation Code is amended to read:

19411. The Franchise Tax Board may recover any refund or credit or any portion thereof which is erroneously made or allowed, together with interest at the adjusted annual rate established pursuant to Section 19521 from the date demand for recovery was made, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California within whichever of the following periods expires the later:

(a) Two years after the refund or credit was made.

(b) During the period within which the Franchise Tax Board may mail a notice of proposed deficiency assessment.

(c) In the case of a corporation, interest shall be computed from the date the refund was made or the credit allowed, instead of the date a demand for recovery was made.

SEC. 77. Section 23043 of the Revenue and Taxation Code is repealed.

SEC. 78. Section 23153 of the Revenue and Taxation Code, as amended by Chapter 64 of the Statutes of 1999, is amended to read:

23153. (a) Every corporation described in subdivision (b) shall be subject to the minimum franchise tax specified in subdivision (d) from the earlier of the date of incorporation, qualification, or commencing to do business within this state, until the effective date

of dissolution or withdrawal as provided in Section 23331 or, if later, the date the corporation ceases to do business within the limits of this state.

(b) Unless expressly exempted by this part or the California Constitution, subdivision (a) shall apply to each of the following:

(1) Every corporation that is incorporated under the laws of this state.

(2) Every corporation that is qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(3) Every corporation that is doing business in this state.

(c) The following entities are not subject to the minimum franchise tax specified in this section:

(1) Credit unions.

(2) Nonprofit cooperative associations organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that have been issued the certificate of the board of supervisors prepared pursuant to Section 54042 of the Food and Agricultural Code. The association shall be exempt from the minimum franchise tax for five consecutive income years, commencing with the first income year for which the certificate is issued pursuant to subdivision (b) of Section 54042 of the Food and Agricultural Code. This paragraph only applies to nonprofit cooperative associations organized on or after January 1, 1994.

(d) (1) Except as provided in paragraph (2), corporations subject to the minimum franchise tax shall pay annually to the state a minimum franchise tax of eight hundred dollars ($800).

(2) The minimum franchise tax shall be twenty-five dollars ($25) for each of the following:

(A) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.

(B) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.

(3) For purposes of paragraph (2), a corporation shall not be considered to have done business if it engages in other than mining.

(e) Notwithstanding subdivision (a), for income years beginning on or after January 1, 1999, and before January 1, 2000, every "qualified new corporation" shall pay annually to the state a minimum franchise tax of five hundred dollars ($500) for the second taxable year. This subdivision shall apply to any corporation that is a qualified new corporation and is incorporated on or after January 1, 1999, and before January 1, 2000.

(1) The determination of the gross receipts of a corporation, for purposes of this subdivision, shall be made by including the gross

receipts of each member of the commonly controlled group, as defined in Section 25105, of which the corporation is a member.

(2) "Gross receipts, less returns and allowances reportable to this state," means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(3) "Qualified new corporation" means a corporation that is incorporated under the laws of this state or has qualified to transact intrastate business in this state, that begins business operations at or after the time of its incorporation and that reasonably estimates that it will have gross receipts, less returns and allowances, reportable to this state for the income year of one million dollars ($1,000,000) or less. "Qualified new corporation" does not include any corporation that began business operations as a sole proprietorship, a partnership, or any other form of business entity prior to its incorporation. This subdivision shall not apply to any corporation that reorganizes solely for the purpose of reducing its minimum franchise tax.

(4) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as defined in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, financial asset securitization investment trusts, as defined in Section 860L of the Internal Revenue Code, qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, or to the formation of any subsidiary corporation, to the extent applicable.

(5) For any income year beginning on or after January 1, 1999, and before January 1, 2000, if a corporation has qualified to pay five hundred dollars ($500) for the second taxable year under this subdivision, but in its second taxable year, the corporation's gross receipts, as determined under paragraphs (1) and (2), exceed one million dollars ($1,000,000), an additional tax in the amount equal to three hundred dollars ($300) for the second taxable year shall be due and payable by the corporation on the due date of its return, without regard to extension, for that year.

(f) (1) Notwithstanding subdivision (a), every corporation that incorporates or qualifies to do business in this state on or after January 1, 2000, shall not be subject to the minimum franchise tax for its first and second taxable years.

(2) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as defined in Section 17948, charitable organizations, as described in Section 23703,

regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, financial asset securitization investment trusts, as defined in Section 860L of the Internal Revenue Code, and qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, to the extent applicable.

(3) This subdivision shall not apply to any corporation that reorganizes solely for the purpose of avoiding payment of its minimum franchise tax.

(g) Notwithstanding subdivision (a), a domestic corporation, as defined in Section 167 of the Corporations Code, that files a certificate of dissolution in the office of the Secretary of State pursuant to subdivision (c) of Section 1905 of the Corporations Code and that does not thereafter do business shall not be subject to the minimum franchise tax for income years beginning on or after the date of that filing.

(h) The minimum franchise tax imposed by paragraph (1) of subdivision (d) shall not be increased by the Legislature by more than 10 percent during any calendar year.

SEC. 79. Section 23221 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 64 of the Statutes of 1999, is amended to read:

23221. (a) Except as provided under subdivisions (b) and (f), a corporation which incorporates under the laws of this state or qualifies to transact intrastate business in this state shall thereupon prepay the minimum tax provided in Section 23153, except that any credit union shall thereupon prepay a tax of twenty-five dollars ($25). The prepayment shall be made to the Secretary of State with the filing of the articles of incorporation or the statement and designation by a foreign corporation. The Secretary of State shall transmit the amount of the prepayment to the Franchise Tax Board. The Franchise Tax Board shall certify to the Secretary of State on an individual or class basis those domestic or foreign corporations which are exempt from prepayment or for which prepayment to the Secretary of State is waived.

(b) (1) For income years commencing on or after January 1, 1997, and before January 1, 1999, the amount payable by a qualified new corporation under subdivision (a) shall be six hundred dollars ($600).

(2) For income years commencing on or after January 1, 1999, and before January 1, 2000, the amount payable by a qualified new corporation that is incorporated on or after January 1, 1999, under subdivision (a) shall be three hundred dollars ($300).

(c) For purposes of this section, "qualified new corporation" means a corporation that begins operation at or after the time of its incorporation and that reasonably estimates that, for the income year, it will have both gross receipts, less returns and allowances

reportable to this state, of one million dollars ($1,000,000) or less and a tax liability under Section 23151 that does not exceed eight hundred dollars ($800). "Qualified new corporation" does not include any corporation that began business operations as a sole proprietorship, a partnership, or any other form of business entity prior to its incorporation.

(1) The determination of gross receipts of a corporation, for purposes of this section, shall be made by including the gross receipts of each member of the commonly controlled group, as defined in Section 25105, of which the bank or corporation is a member.

(2) "Gross receipts, less returns and allowances reportable to this state," means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(d) Subdivision (b) shall not apply to any corporation if 50 percent or more of its stock is, or will be upon the initial issuance of stock, owned by another corporation.

(e) (1) For income years commencing on or after January 1, 1997, and before January 1, 1999, if a corporation paid six hundred dollars ($600) under paragraph (1) of subdivision (b), but for its first income year the corporation's tax liability under Section 23151 exceeds eight hundred dollars ($800), or the corporation's gross receipts, as determined under paragraph (2) of subdivision (c), exceed one million dollars ($1,000,000), an additional tax in an amount equal to two hundred dollars ($200) shall be due and payable by the corporation on the due date of its return, without regard to extension, for its first income year.

(2) For income years commencing on or after January 1, 1999, and before January 1, 2000, if a corporation paid three hundred dollars ($300) under paragraph (2) of subdivision (b), but for its first income year the corporation's tax liability under Section 23151 exceeds eight hundred dollars ($800), or the corporation's gross receipts, as determined under paragraphs (1) and (2) of subdivision (c), exceed one million dollars ($1,000,000), an additional tax in an amount equal to five hundred dollars ($500) shall be due and payable by the corporation on the due date of its return, without regard to extension, for its first income year.

(f) Every corporation that incorporates under the laws of this state or qualifies to transact intrastate business in this state on or after January 1, 2000, and before January 1, 2001, shall not be subject to the amount payable under subdivision (a), except that any credit union shall thereupon prepay a tax of twenty-five dollars ($25).

(g) This section shall remain in effect only until January 1, 2001, and as of that date is repealed.

SEC. 80. Section 23335 of the Revenue and Taxation Code is amended to read:

23335. (a) Any return filed pursuant to Section 18601 that the taxpayer designates in the appropriate place on the form provided by the Franchise Tax Board as the taxpayer's final return as the result of a dissolution or withdrawal shall be treated as a request for a certificate issued by the Franchise Tax Board pursuant to Section 23334 unless the taxpayer has otherwise filed a request with the Franchise Tax Board for that certificate.

(b) If a taxpayer has filed a return that is a request for a tax clearance certificate as described in subdivision (a), the Franchise Tax Board shall provide the taxpayer with information, including forms and instructions, regarding all documents that are required by this article to be filed with the Franchise Tax Board and the Secretary of State.

SEC. 81. Section 23612.2 of the Revenue and Taxation Code is amended to read:

23612.2. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) for the income year an amount equal to the sales or use tax paid or incurred during the income year by the taxpayer in connection with the taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means a corporation engaged in a trade or business within an enterprise zone.

(2) "Qualified property" means:

(A) Any of the following:

(i) Machinery and machinery parts used for fabricating, processing, assembling, and manufacturing.

(ii) Machinery and machinery parts used for the production of renewable energy resources.

(iii) Machinery and machinery parts used for either of the following:

(I) Air pollution control mechanisms.

(II) Water pollution control mechanisms.

(iv) Data processing and communications equipment, including, but not limited to, computers, computer-automated drafting systems, copy machines, telephone systems, and faxes.

(v) Motion picture manufacturing equipment central to production and postproduction, including, but not limited to, cameras, audio recorders, and digital image and sound processing equipment.

(B) The total cost of qualified property purchased and placed in service in any income year that may be taken into account by any taxpayer for purposes of claiming this credit shall not exceed twenty million dollars ($20,000,000).

(C) The qualified property is used by the taxpayer exclusively in an enterprise zone.

(D) The qualified property is purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) "Enterprise zone" means the area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit which exceeds the "tax" may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the qualified property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Section 23622.7, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the enterprise zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the enterprise zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section in accordance with paragraph (3).

(3) Business income shall be apportioned to the enterprise zone by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the enterprise zone during the taxable year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (d).

(g) The amendments made to this section by the act adding this subdivision shall apply to income years beginning on or after January 1, 1998.

SEC. 82. Section 23622.7 of the Revenue and Taxation Code is amended to read:

23622.7. (a) There shall be allowed a credit against the "tax" (as defined by Section 23036) to a taxpayer who employs a qualified employee in an enterprise zone during the income year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the income year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages

paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

(aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who

has not received written notification but whose employer has made a public announcement of the closure or layoff.

(cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

(aa) Federal Supplemental Security Income benefits.

(bb) Aid to Families with Dependent Children.

(cc) Food stamps.

(dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area (as defined in Section 7072 of the Government Code).

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 23622 or the program area hiring credit under former Section 23623.

(XI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) "Taxpayer" means a corporation engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(6) "Seasonal employment" means employment by a taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) For purposes of this subdivision, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) (A) If the employment, other than seasonal employment, of any qualified employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the taxpayer, shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that qualified employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as

defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) Rules similar to the rules provided in Section 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies.

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(g) For purposes of this section, "enterprise zone" means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 23623.5, 23625, and 23646 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the credit, if any, in succeeding income years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23612.2, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the enterprise zone. For that purpose, the taxpayer's business attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the enterprise zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section in accordance with paragraph (3).

(3) Business income shall be apportioned to the enterprise zone by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the enterprise zone during the income year, and the denominator of which is the average value of all the

taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (i).

(k) The changes made to this section by the act adding this subdivision shall apply to income years on or after January 1, 1997.

SEC. 83. Section 23645 of the Revenue and Taxation Code is amended to read:

23645. (a) For each income year beginning on or after January 1, 1995, there shall be allowed as a credit against the "tax" (as defined by Section 23036) for the income year an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property to the extent that the qualified property does not exceed a value of twenty million dollars ($20,000,000).

(b) For purposes of this section:

(1) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(2) "Taxpayer" means a corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees that are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the income year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(3) "Qualified property" means property that is each of the following:

(A) Purchased by the taxpayer for exclusive use in a trade or business conducted within a LAMBRA.

(B) Purchased before the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(C) Any of the following:

(i) High technology equipment, including, but not limited to, computers and electronic processing equipment.

(ii) Aircraft maintenance equipment, including, but not limited to, engine stands, hydraulic mules, power carts, test equipment, handtools, aircraft start carts, and tugs.

(iii) Aircraft components, including, but not limited to, engines, fuel control units, hydraulic pumps, avionics, starts, wheels, and tires.

(iv) Section 1245 property, as defined in Section 1245(a)(3) of the Internal Revenue Code.

(c) The credit provided under subdivision (a) shall only be allowed for qualified property manufactured in California unless qualified property of a comparable quality and price is not available for timely purchase and delivery from a California manufacturer.

(d) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit which exceeds the "tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) (1) The amount of the credit otherwise allowed under this section and Section 23646, including any credit carryovers from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributable income represented all the income of the taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the LAMBRA. For that purpose, the taxpayer's business income that is

attributable to sources in this state shall first be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the LAMBRA in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section in accordance with paragraph (3).

(3) Income shall be apportioned to a LAMBRA by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor, plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the LAMBRA during the income year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the LAMBRA during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (d).

(g) (1) If the qualified property is disposed of or no longer used by the taxpayer in the LAMBRA, at any time before the close of the second income year after the property is placed in service, the amount of the credit previously claimed, with respect to that property, shall be added to the taxpayer's tax liability in the income year of that disposition or nonuse.

(2) At the close of the second income year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's tax for the taxpayer's second income year.

(h) If the taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(i) The amendments made to this section by the act adding this subdivision shall apply to income years beginning on or after January 1, 1998.

SEC. 84. Section 23649 of the Revenue and Taxation Code is amended to read:

23649. (a) (1) A qualified taxpayer shall be allowed a credit against the "tax," as defined in Section 23036, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(2) In the case of any qualified costs paid or incurred on or after January 1, 1994, and prior to the first income year of the qualified taxpayer beginning on or after January 1, 1995, the credit provided under paragraph (1) shall be claimed by the qualified taxpayer on the qualified taxpayer's return for the first income year beginning on or after January 1, 1995. No credit shall be claimed under this section on a return filed for any income year commencing prior to the qualified taxpayer's first income year beginning on or after January 1, 1995.

(b) (1) For purposes of this section, "qualified cost" means any cost that satisfies each of the following conditions:

(A) Except as otherwise provided in this subparagraph, is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i). In the case of any qualified property constructed, reconstructed, or acquired by the qualified taxpayer (or any person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) pursuant to a binding contract in existence on or prior to January 1, 1994, costs paid pursuant to that contract shall be subject to allocation as follows: contract costs shall be allocated to qualified property based on a ratio of costs actually paid prior to January 1, 1994, and total contract costs actually paid. "Cost paid" shall include, without limitation, contractual deposits and option payments. To the extent of cost allocated, whether or not currently deductible or depreciable for tax purposes, to a period prior to January 1, 1994, the cost shall be deemed allocated to property acquired before January 1, 1994, and is thus not a "qualified cost."

(B) Except as provided in paragraph (3) of subdivision (d) and subparagraph (B) of paragraph (4) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001).

(C) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(2) (A) For purposes of this subdivision, any contract entered into on or after January 1, 1994, that is a successor or replacement contract to a contract that was binding prior to January 1, 1994, shall be treated as a binding contract in existence prior to January 1, 1994.

(B) If a successor or replacement contract is entered into on or after January 1, 1994, and the subject of the successor or replacement contract relates both to amounts for the construction, reconstruction, or acquisition of qualified property described in the original binding contract and to costs for the construction, reconstruction, or acquisition of qualified property not described in the original binding contract, then the portion of those amounts described in the successor or replacement contract that were not described in the

original binding contract shall not be treated as costs paid or incurred pursuant to a binding contract in existence on or prior to January 1, 1994, under subparagraph (A) of paragraph (1).

(3) (A) For purposes of this section, an option contract in existence prior to January 1, 1994, under which a qualified taxpayer (or any other person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) had an option to acquire qualified property, shall be treated as a binding contract under the rules in paragraph (2). For purposes of this subparagraph, an option contract shall not include an option under which the optionholder will forfeit an amount less than 10 percent of the fixed option price in the event the option is not exercised.

(B) For purposes of this section, a contract shall be treated as binding even if the contract is subject to a condition.

(4) For purposes of this subdivision, in the case of any qualified taxpayer engaged in those lines of business described in Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "the first income year beginning on or after January 1, 1998," shall be substituted for "January 1, 1994," in each place in which it appears.

(c) (1) For purposes of this section, "qualified taxpayer" means any taxpayer engaged in those lines of business described in Codes 2011 to 3999, inclusive, or Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer shall be made at the entity level and any credit under this section or Section 17053.49 shall be allowed to the passthrough entity and passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, the term "passthrough entity" means any partnership or S corporation.

(3) The Franchise Tax Board may prescribe regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the effect of this section through splitups, shell corporations, partnerships, tiered ownership structures, sale-leaseback transactions, or otherwise.

(d) For purposes of this section, "qualified property" means property that is described as either of the following:

(1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that is primarily used for any of the following:

(A) For the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(B) In research and development.

(C) To maintain, repair, measure, or test any property described in this paragraph.

(D) For pollution control that meets or exceeds standards established by the state or by any local or regional governmental agency within the state.

(E) For recycling.

(2) Computers and computer peripheral equipment, as defined in Section 168(i)(2)(B) of the Internal Revenue Code, that is tangible personal property as defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in SIC Codes 7371 to 7373, inclusive, of the SIC Manual, 1987 edition, that is primarily used to develop or manufacture prepackaged software or custom software prepared to the special order of the purchaser who uses the program to produce and sell or license copies of the program as prepackaged software.

(3) The value of any capitalized labor costs that are directly allocable to the construction or modification of property described in paragraph (1) or (2).

(4) In the case of any qualified taxpayer engaged in manufacturing activities described in SIC Code 357 or 367, those activities related to biotechnology described in SIC Code 8731, those activities related to biopharmaceutical establishments only that are described in SIC Codes 2833 to 2836, inclusive, those activities related to space vehicles and parts described in SIC Codes 3761 to 3769, inclusive, those activities related to space satellites and communications satellites and equipment described in SIC Codes 3663 and 3812 (but only with respect to "qualified property" that is placed in service on or after January 1, 1996), or those activities related to semiconductor equipment manufacturing described in SIC Code 3559 (but only with respect to "qualified property" that is placed in service on or after January 1, 1997), "qualified property" also includes the following:

(A) Special purpose buildings and foundations that are constructed or modified for use by the qualified taxpayer primarily in a manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(B) The value of any capitalized labor costs that are directly allocable to the construction or modification of special purpose buildings and foundations that are used primarily in the

manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(C) (i) For purposes of this paragraph, "special purpose building and foundation" means only a building and the foundation immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subparagraph (A) ("qualified purpose").

(ii) A building is specifically designed and constructed or modified for a qualified purpose if it is not economical to design and construct the building for the intended purpose and then use the structure for a different purpose.

(iii) For purposes of clause (i) and clause (vi), a building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate to the qualified purpose. It will be conclusively presumed that a use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualified purpose.

(iv) In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subparagraph.

(v) To the extent that a building is not a special purpose building as defined above, but a portion of the building qualifies for treatment as a special purpose building, then all equipment which exclusively supports the qualified purpose occurring within that portion and which would qualify as Internal Revenue Code Section 1245 property if it were not a fixture or affixed to the building shall be treated as a cost of the portion of the building which qualifies for treatment as a special purpose building.

(vi) Buildings and foundations which do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to: buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the

manufacturing process. A research facility shall not be considered to be used primarily prior to or after, or prior to and after, the manufacturing process if its purpose and use relate exclusively to the development and regulatory approval of the manufacturing process for specific biopharmaceutical products. A research facility which is used primarily in connection with the discovery of an organism from which a biopharmaceutical product or process is developed does not meet the requirements of the preceding sentence.

(5) Subject to the provisions in subparagraph (B) of paragraph (1) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) or (2) of this subdivision.

(6) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(G) Any vehicle for which a credit is claimed pursuant to Section 17052.11 or 23603.

(e) For purposes of this section:

(1) "Biopharmaceutical activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(2) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(4) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(5) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(6) "Process" means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(7) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(9) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) "Small business" means a qualified taxpayer that meets any of the following requirements during the income year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars ($50,000,000).

(B) Has net assets of less than fifty million dollars ($50,000,000).

(C) Has a total credit of less than one million dollars ($1,000,000).

(D) For income years beginning on or after January 1, 1997, is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and has not received regulatory approval for any product from the United States Food and Drug Administration.

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, shall not be allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

(2) For purposes of paragraphs (2) and (3) of subdivision (b), "binding contract" shall include any lease agreement with respect to the qualified property.

(3) (A) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is not treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(i) Except as provided by subparagraph (C) of this paragraph, subparagraphs (A) and (C) of paragraph (1) of subdivision (b) shall not apply.

(ii) Except as provided in subparagraph (B) and clause (iii), the "qualified cost" upon which the lessee shall compute the credit provided under this section shall be equal to the original cost to the lessor (within the meaning of Section 24912) of the qualified property that is the subject of the lease.

(iii) Except as provided in clause (iv), the requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied only if the lessor has made a timely election under either Section 6094.1 or subdivision (d) of Section 6244 and has paid sales tax reimbursement or use tax measured by the purchase price of the qualified property (within the meaning of paragraph (5) of subdivision (g) of Section 6006). For purposes of this subdivision and clause (iv), the amount of original cost to the lessor which may be taken into account under clause (ii) shall not exceed the purchase price upon which sales tax reimbursement or use tax has been paid under the preceding sentence or under clause (iv).

(iv) With respect to leases entered into between January 1, 1994, and the effective date of this clause, the lessor may elect to pay use tax measured by the purchase price of the property by reporting and paying the tax with the return of the lessor for the fourth calendar quarter of 1994. In computing the use tax under the preceding sentence, a credit shall be allowed under Part 1 (commencing with Section 6001) for all sales or use tax previously paid on the lease.

(B) For purposes of applying subparagraph (A) only, the following special rules shall apply:

(i) The original cost to the lessor of the qualified property shall be reduced by the amount of any original cost of that property that was taken into account by any predecessor lessee in computing the credit allowable under this section.

(ii) Clause (i) shall not apply in any case where the predecessor lessee was required to recapture the credit provided under this section pursuant to subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001), the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified property that was taken into account by any lessee

of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i), shall be taken into account. In the case of any qualified property constructed, reconstructed, or acquired by a lessor pursuant to a binding contract in existence on or prior to January 1, 1994, the allocation rule specified in subparagraph (A) of paragraph (1) of subdivision (b) shall apply in determining the original cost to the lessor of qualified property.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's) acquisition of the qualified property from the lessor (or successor lessor) shall be treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(4) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(A) Subparagraph (A) of paragraph (1) of subdivision (b) shall be applied by substituting the term "purchase" for the term "construction, reconstruction, or acquisition."

(B) Subparagraph (C) of paragraph (1) of subdivision (b) shall apply.

(C) The requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001).

(5) (A) In the case of any leasing transaction described in paragraph (3), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

(B) The statement required under subparagraph (A) shall be made available to the Franchise Tax Board upon request.

(6) For purposes of this subdivision, in the case of any qualified taxpayer engaged in those lines of business described in Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "the first income year beginning on or after

January 1, 1998," shall be substituted for "January 1, 1994," in each place in which it appears. In addition, "the effective date of this paragraph" shall be substituted for "the effective date of this clause" and "fourth calendar quarter of 1998" shall be substituted for "fourth calendar quarter of 1994."

(g) No credit shall be allowed if the qualified property is removed from the state, is disposed of to an unrelated party, or is used for any purpose not qualifying for the credit provided in this section in the same taxable year in which the qualified property is first placed in service in this state. If any qualified property for which a credit is allowed pursuant to this section is thereafter removed from this state, disposed of to an unrelated party, or used for any purpose not qualifying for the credit provided in this section within one year from the date the qualified property is first placed in service in this state, the amount of the credit allowed by this section for that qualified property shall be recaptured by adding that credit amount to the net tax of the qualified taxpayer for the taxable year in which the qualified property is disposed of, removed, or put to an ineligible use.

(h) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years as follows:

(1) Except as provided in paragraph (2), for the seven succeeding years if necessary, until the credit is exhausted.

(2) In the case of a small business, for the nine succeeding years, if necessary, until the credit is exhausted.

(i) (1) This section shall remain in effect until the date specified in paragraph (2) on which date this section shall cease to be operative, and as of that date is repealed.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

(j) The amendments made by the act adding this subdivision shall be operative for income years beginning on or after January 1, 1997, except as provided in paragraph (3) of subdivision (d).

(k) The amendments made by the act adding this subdivision shall be operative for income years beginning on or after January 1, 1998.

SEC. 85. Section 23701c of the Revenue and Taxation Code is amended to read:

23701c. Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal

of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

SEC. 86. Section 23701q of the Revenue and Taxation Code is repealed.

SEC. 87. Section 23704.5 of the Revenue and Taxation Code is amended to read:

23704.5. (a) In the case of an organization to which this section applies, exemption from taxation under Section 23701 shall be denied because a substantial part of the activities of that organization consists of carrying on propaganda, or otherwise attempting to influence legislation, but only if that organization normally—

(1) Makes lobbying expenditures in excess of the lobbying ceiling amount for that organization for each taxable year, or

(2) Makes grassroots expenditures in excess of the grassroots ceiling amount for that organization for each taxable year.

(b) For purposes of this section—

(1) The term "lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in subdivision (d) of Section 23740).

(2) The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for the organization for that taxable year, determined under Section 23740.

(3) The term "grassroots expenditures" means expenditures for the purpose of influencing legislation (as defined in subdivision (d) of Section 23740 without regard to subparagraph (B) of paragraph (1) thereof).

(4) The grassroots ceiling amount for any organization for any taxable year is 150 percent of the grassroots nontaxable amount for that organization for that taxable year, determined under Section 23740.

(c) This section shall apply to any organization which has elected (in that manner and at that time as the Franchise Tax Board may prescribe) to have the provisions of this section apply to that organization and which, for the taxable year which includes the date the election is made, is described in Section 23701d and—

(1) Is described in subdivision (d), and

(2) Is not a disqualified organization under subdivision (e).

(d) An organization is described in this paragraph if it is described in—

(1) Section 170(b)(1)(A)(ii) of the Internal Revenue Code (relating to educational institutions),

(2) Section 170(b)(1)(A)(iii) of the Internal Revenue Code (relating to hospitals and medical research organizations),

(3) Section 170(b)(1)(A)(iv) of the Internal Revenue Code (relating to organizations supporting government schools),

(4) Section 170(b)(1)(A)(vi) of the Internal Revenue Code (relating to organizations publicly supported by charitable contributions),

(5) Section 509(a)(2) of the Internal Revenue Code (relating to organizations publicly supported by admissions, sales, etc.), or

(6) Section 509(a)(3) of the Internal Revenue Code (relating to organizations supporting certain types of public charities) except that for purposes of this paragraph, Section 509(a)(3) of the Internal Revenue Code shall be applied without regard to the last sentence of Section 509(a) of the Internal Revenue Code.

(e) For purposes of subdivision (c) an organization is a disqualified organization if it is—

(1) Described in Section 170(b)(1)(A)(i) of the Internal Revenue Code (relating to churches),

(2) An integrated auxiliary of a church or of a convention or association of churches, or

(3) A member of an affiliated group of organizations (within the meaning of paragraph (2) of subdivision (f) of Section 23740) if one or more members of that group is described in paragraphs (1) and (2).

(f) An election by an organization under this section shall be effective for all taxable years of those organizations which—

(1) End after the date the election is made, and

(2) Begin before the date the election is revoked by that organization (under regulations prescribed by the Franchise Tax Board).

(g) With respect to any organization for a taxable year for which—

(1) That organization is a disqualified organization (within the meaning of subdivision (e)), or

(2) An election under this section is not in effect for that organization,

nothing in this section or in Section 23740 shall be construed to affect the interpretation of the phrase, "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, under Section 23701d."

(h) For rules regarding affiliated organizations see subdivision (f) of Section 23740.

SEC. 88. Section 23704.6 of the Revenue and Taxation Code is amended to read:

23704.6. (a) An organization which—

(1) Was exempt (or was determined by the Franchise Tax Board to be exempt) from taxation under Section 23701 by reason of being an organization described in Section 23701d, and

(2) Is not an organization described in Section 23701d:

(A) By reason of carrying on propaganda, or otherwise attempting, to influence legislation, or

(B) By reason of participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public

office, shall not at any time thereafter be treated as an organization described in Section 23701f.

(b) The Franchise Tax Board shall prescribe those regulations as may be necessary or appropriate to prevent the avoidance of subdivision (a), including regulations relating to a direct or indirect transfer of all or part of the assets of an organization to an organization controlled (directly or indirectly) by the same person or persons who control the transferor organization.

(c) Subdivision (a) shall not apply to any organization which is a disqualified organization within the meaning of subdivision (e) of Section 23704.5 (relating to churches, etc.) for the taxable year immediately preceding the first taxable year for which that organization is described in paragraph (2) of subdivision (a).

SEC. 89. Section 23731 of the Revenue and Taxation Code is amended to read:

23731. Every organization or trust exempt under this chapter, except as provided in this article, is subject to the tax imposed upon its unrelated business taxable income, as defined in Section 23732, as follows:

(a) Corporations (other than banks and financial corporations), associations, and business trusts are subject to the tax imposed under Section 23501.

(b) Trusts are subject to the tax imposed by subdivision (e) of Section 17041.

This section applies to income years beginning after December 31, 1970.

SEC. 90. Section 23736.1 of the Revenue and Taxation Code is amended to read:

23736.1. (a) For the purposes of this article, the term "prohibited transaction" means any transaction in which an organization subject to the provisions of this article—

(1) Lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

(2) Pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(3) Makes any part of its services available on a preferential basis to;

(4) Makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;

(5) Sells any substantial part of its securites or other property, for less than an adequate consideration in money or money's worth, to; or

(6) Engages in any other transaction which results in a substantial diversion of its income or corpus to; the creator of the organization (if a trust); a person who has made a substantial contribution to the organization; a member of the family (as defined in Section

267(c)(4) of the Internal Revenue Code) of an individual who is the creator of that trust or who has made a substantial contribution to that organization; or a corporation controlled by that creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(b) For purposes of subdivision (a), a bond, debenture, note, or certificate or other evidence of indebtedness (hereinafter in this section referred to as "obligation") acquired by a trust described in Section 23701n shall not be treated as a loan made without the receipt of adequate security if—

(1) Such obligation is acquired—

(A) On the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the trust than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) From an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) Directly from the issuer, at a price not less favorable to the trust than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) Immediately following acquisition of that obligation—

(A) Not more than 25 percent of the aggregate amount of obligations issued in that issue and outstanding at the time of acquisition is held by the trust, and

(B) At least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) Immediately following acquisition of the obligation, not more than 25 percent of the assets of the trust is invested in obligations of persons described in subdivision (a).

(4) (A) In the case of a trust described in Section 23701n, or in the case of a corporation described in Section 23701h, all of the stock of which was acquired before January 1, 1961, by a trust described in Section 23701n, any indebtedness incurred by that trust or that corporation before January 1, 1961, in connection with real property which is leased before January 1, 1961, and any indebtedness incurred by that trust or that corporation on or after that date necessary to carry out the terms of that lease, shall not be considered as an indebtedness with respect to that trust or that corporation for purposes of this section.

(B) In the application of paragraph (1) of subdivision (a), if a trust described in Section 23701n forming part of a supplemental unemployment compensation benefit plan lends any money to another trust described in Section 23701n forming part of the same plan, that loan shall not be treated as an indebtedness of the borrowing trust, except to the extent that the loaning trust—

(i) Incurs any indebtedness in order to make that loan,

(ii) Incurred indebtedness before the making of that loan which would not have been incurred but for the making of that loan, or

(iii) Incurred indebtedness after the making of that loan which would not have been incurred but for the making of that loan and which was reasonably foreseeable at the time of making that loan.

(c) Subdivision (a) shall not apply to a loan made by a trust described in Section 23701n to the employer (or to a renewal of that loan or, if the loan is repayable upon demand, to a continuation of that loan) if the loan bears a reasonable rate of interest, and if (in the case of a making or renewal)—

(1) The employer is prohibited (at the time of that making or renewal) by any law of the United States or regulation thereunder from directly or indirectly pledging, as security for the loan, a particular class or classes of his or her assets the value of which (at that time) represents more than one-half of the value of all his or her assets;

(2) The making or renewal, as the case may be, is approved in writing as an investment that is consistent with the exempt purposes of the trust by a trustee who is independent of the employer, and no other independent trustee had previously refused to give that written approval; and

(3) Immediately following the making or renewal, as the case may be, the aggregate amount loaned by the trust to the employer, without the receipt of adequate security, does not exceed 25 percent of the value of all the assets of the trust.

(4) For purposes of paragraph (2) the term "trustee" means, with respect to any trust for which there is more than one trustee who is independent of the employer, a majority of those independent trustees. For purposes of paragraph (3), the determination as to whether any amount loaned by the trust to the employer is loaned without the receipt of adequate security shall be made without regard to subdivision (b).

SEC. 91. Section 23740 of the Revenue and Taxation Code is amended to read:

23740. (a) This section applies to any organization with respect to which an election under Section 23704.5 (relating to lobbying expenditures by public charities) is in effect for the taxable year.

(b) For purposes of this section, the term "excess lobbying expenditures" means for a taxable year, the greater of—

(1) The amount by which the lobbying expenditures made by the organization during the taxable year exceed the lobbying nontaxable amount for the organization for that taxable year, or

(2) The amount by which the grassroots expenditures made by the organization during the taxable year exceed the grassroots nontaxable amount for that organization for such taxable year.

(c) For purposes of this section—

(1) The term "lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in subdivision (d)).

(2) The lobbying nontaxable amount for any organization for any taxable year is the lesser of (A) one million dollars ($1,000,000) or (B) the amount determined under the following table:

If the exempt purpose expenditures are—	The lobbying nontaxable amount is—
Not over $500,000	20 percent of the exempt purpose expenditures.
Over $500,000 but not over $1,000,000	$100,000, plus 15 percent of the excess of the exempt purpose expenditures over $500,000.
Over $1,000,000 but not over $1,500,000	$175,000, plus 10 percent of the excess of the exempt purpose expenditures over $1,000,000.
Over $1,500,000	$225,000, plus 5 percent of the excess of the exempt purpose expenditures over $1,500,000.

(3) The term "grassroots expenditures" means expenditures for the purpose of influencing legislation (as defined in subdivision (d) without regard to subparagraph (B) of paragraph (1) thereof).

(4) The grassroots nontaxable amount for any organization for any taxable year is 25 percent of the lobbying nontaxable amount (determined under paragraph (2) for the organization for that taxable year.

(d) (1) Except as otherwise provided in paragraph (2), for purposes of this section, the term "influencing legislation" means—

(A) Any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and

(B) Any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

(2) For purposes of this section, the term "influencing legislation," with respect to an organization, does not include—

(A) Making available the results of nonpartisan analysis, study, or research;

(B) Providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to a written request by that body or subdivision, as the case may be;

(C) Appearances before, or communications to, any legislative body with respect to a possible decision of that body that might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

(D) Communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than communications described in paragraph (3); and

(E) Any communication with a government official or employee, other than—

(i) A communication with a member or employee of a legislative body (where that communication would otherwise constitute the influencing of legislation), or

(ii) A communication, the principal purpose of which is to influence legislation.

(3) (A) A communication between an organization and any bona fide member of the organization to directly encourage that member to communicate as provided in subparagraph (B) of paragraph (1) shall be treated as a communication described in subparagraph (B) of paragraph (1).

(B) A communication between an organization and any bona fide member of the organization to directly encourage that member to urge persons other than members to communicate as provided in either subparagraph (A) or subparagraph (B) of paragraph (1) shall be treated as a communication described in subparagraph (A) of paragraph (1).

(e) For purposes of this section—

(1) (A) The term "exempt purpose expenditures" means, with respect to any organization for any taxable year, the total of the amounts paid or incurred by the organization to accomplish purposes described in paragraph (2) of subdivision (b) of Section 24359 (relating to religious, charitable, educational, etc., purposes).

(B) The term "exempt purpose expenditures" includes—

(i) Administrative expenses paid or incurred for purposes described in paragraph (2) of subdivision (b) of Section 24359, and

(ii) Amounts paid or incurred for the purpose of influencing legislation (whether or not for purposes described in paragraph (2) of subdivision (b) of Section 24359).

(C) The term "exempt purpose expenditures" does not include amounts paid or incurred to or for—

(i) A separate fundraising unit of the organization, or

(ii) One or more other organizations, if the amounts are paid or incurred primarily for fundraising.

(2) The term "legislation" includes action with respect to acts, bills, resolutions, or similar items by the Congress, any state legislature, any local council, or similar governing body or by the public in a referendum, initiative, constitutional amendment, or similar procedure.

(3) The term "action" is limited to the introduction, amendment, enactment, defeat, or repeal of acts, bills, resolutions, or similar items.

(4) In computing expenditures paid or incurred for the purpose of influencing legislation (within the meaning of paragraph (1) or (2) of subdivision (b)) or exempt purpose expenditures (as defined in paragraph (1)), amounts properly chargeable to capital account shall not be taken into account. There shall be taken into account a reasonable allowance for exhaustion, wear and tear, obsolescence or amortization. The allowance shall be computed only on the basis of the straight line method of depreciation. For purposes of this section, a determination of whether an amount is properly chargeable to capital account shall be made on the basis of the principles that apply under this part to amounts which are paid or incurred in a trade or business.

(f) (1) Except as otherwise provided in paragraph (4), if for a taxable year two or more organizations described in Section 23701d are members of an affiliated group of organizations as defined in paragraph (2), and an election under Section 23704.5 is effective for at least that organization for that year, then—

(A) The determination as to whether excess lobbying expenditures have been made and the determination as to whether the expenditure limits of subdivision (a) of Section 23704.5 have been exceeded shall be made as though the affiliated group is one organization.

(B) If the group has excess lobbying expenditures, each organization as to which an election under Section 23704.5 is effective for that year shall be treated as an organization that has excess lobbying expenditures in an amount which equals the organization's proportionate share of the group's excess lobbying expenditures.

(C) If the expenditure limits of subdivision (a) of Section 23704.5 are exceeded, each organization as to which an election under Section 23704.5 is effective for that year shall be treated as an organization that is not described in Section 23701d by reason of the application of Section 23704.5, and

(D) Subparagraphs (C) and (D) of paragraph (2) of subdivision (d), paragraph (3) of subdivision (d), and clause (i) of subparagraph (C) of paragraph (1) of subdivision (e) shall be applied as if the affiliated group were one organization.

(2) For purposes of paragraph (1), two organizations are members of an affiliated group of organizations but only if—

(A) The governing instrument of one organization requires it to be bound by decisions of the other organization on legislative issues, or

(B) The governing board of one organization includes persons who—

(i) Are specifically designated representatives of another organization or are members of the governing board, officers, or paid executive staff members of the other organization, and

(ii) By aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first organization.

(3) If members of an affiliated group of organizations have different taxable years, their expenditures shall be computed for purposes of this section in a manner to be prescribed by regulations promulgated by the Franchise Tax Board.

(4) If two or more organizations are members of an affiliated group of organizations (as defined in paragraph (2) without regard to subparagraph (B) thereof), no two members of the affiliated group are affiliated (as defined in paragraph (2) without regard to subparagraph (A) thereof), and the governing instrument of no organization requires it to be bound by decisions of any of the other organizations on legislative issues other than as to action with respect to acts, bills, resolutions, or similar items by the Congress or State Legislature, then—

(A) In the case of any organization whose decisions bind one or more members of the affiliated group, directly or indirectly, the determination as to whether the organization has paid or incurred excess lobbying, expenditures and the determination as to whether the organization has exceeded the expenditure limits of subdivision (a) of Section 23704.5 shall be made as though the organization has paid or incurred those amounts paid or incurred by the members of the affiliated group to influence legislation with respect to acts, bills, resolutions, or similar items by the Congress or State Legislature, and

(B) In the case of any organization to which subparagraph (A) does not apply, but which is a member of the affiliated group, the determination as to whether the organization has paid or incurred excess lobbying expenditures and the determination as to whether the organization has exceeded the expenditure limits of subdivision (a) of Section 23704.5 shall be made as though the organization is not a member of the affiliated group.

SEC. 92. Section 23776 of the Revenue and Taxation Code is amended to read:

23776. (a) Any organization which has suffered the suspension or forfeiture provided for in Section 23775 may, in accordance with Section 23305a, be relieved therefrom upon the filing of all of the following:

(1) An application for revivor.

(2) When required by the Franchise Tax Board, a new application for exemption under Section 23701.

(3) Any returns, statements, notifications, or amounts due under Sections 23772, 23774, or 23775 which were not previously submitted or paid and which resulted in the suspension or forfeiture.

(4) An information return or statement and the amounts specified under Section 23772 for each year, or part thereof, during the period of suspension or forfeiture in which the organization conducted any activities or received income, grants, gifts or any other asset.

(b) Any organization exempt from tax under Section 23701 which has suffered the suspension or forfeiture provided for in Section 23301 or 23301.5 may be required by the Franchise Tax Board to file a new application for exemption in connection with an application for revivor under Section 23305.

SEC. 93. Section 23777 of the Revenue and Taxation Code is amended to read:

23777. The exemption granted to any organization under the provisions of Article 1 (commencing with Section 23701) of this chapter may be revoked by the Franchise Tax Board if the organization fails to—

(a) File any return required under this chapter or pay any amount due under this part or Part 10.2 (commencing with Section 18401) on or before the last day of the 12th month following the close of the income year;

(b) Comply with Section 19504 (relating to powers of the Franchise Tax Board to examine records and subpoena witnesses); or

(c) Confine its activities to those permitted by the section under which the exemption was granted.

SEC. 94. Section 23778 of the Revenue and Taxation Code is amended to read:

23778. An organization whose exemption was revoked under Section 23777 may be reestablished as an exempt organization upon:

(a) The filing or payment of:

(1) A new application for exemption and payment of the filing fee required under Section 23701;

(2) Any returns, statements, or payment of any amounts due under this part or Part 10.2 (commencing with Section 18401) which were not previously submitted or paid and which resulted in the revocation.

(b) When revocation occurred under subdivision (c) of Section 23777, satisfactory proof that—

(1) The organization has corrected its nonexempt activities; and

(2) That it will operate in an exempt manner in the future; and

(3) The payment of any tax for periods the organization was not qualified for exemption.

SEC. 95. Section 24306 of the Revenue and Taxation Code is amended to read:

24306. (a) For purposes of this section, the following terms have the following meanings, as provided in the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code):

(1) "Beneficiary" has the meaning set forth in subdivision (c) of Section 69980 of the Education Code.

(2) "Benefit" has the meaning set forth in subdivision (d) of Section 69980 of the Education Code.

(3) "Participant" has the meaning set forth in subdivision (h) of Section 69980 of the Education Code.

(4) "Participation agreement" has the meaning set forth in subdivision (i) of Section 69980 of the Education Code.

(5) "Scholarshare trust" has the meaning set forth in subdivision (f) of Section 69980 of the Education Code.

(b) Except as otherwise provided in subdivision (c), gross income of a participant shall not include any of the following:

(1) Any earnings under a Scholarshare trust, or a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(2) Contributions to the Scholarshare trust on behalf of a beneficiary shall not be includable as gross income of that beneficiary.

(c) (1) Any distribution under a Scholarshare trust participation agreement shall be includable in the gross income of the distributee in the manner as provided under Section 72 of the Internal Revenue Code, as modified by Section 24272.2, to the extent not excluded from gross income under any other provision of this part. For purposes of applying Section 72 of the Internal Revenue Code, the following apply:

(A) All Scholarshare trust accounts of which an individual is a beneficiary shall be treated as one account, except as otherwise provided.

(B) All distributions during an income year shall be treated as one distribution.

(C) The value of the participation agreement, income on the participation agreement, and investment in the participation agreement shall be computed as of the close of the calendar year in which the income year begins.

(2) A contribution by a for-profit or nonprofit entity, or by a state or local government agency, for the benefit of an owner or employee of that entity or a beneficiary whom the owner or employee has the power to designate, including the owner or employee's minor children, shall be included in the gross income of that owner or employee in the year the contribution is made.

(3) For purposes of this subdivision, "distribution" includes any benefit furnished to a beneficiary under a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(4) (A) Paragraph (1) shall not apply to that portion of any distribution that, within 60 days of distribution, is transferred to the credit of another beneficiary under the Scholarshare trust who is a "member of the family," as that term is used in Section 529(e)(2) of

the Internal Revenue Code, as amended by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34), of the former beneficiary of that Scholarshare trust.

(B) Any change in the beneficiary of an interest in the Scholarshare trust shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a "member of the family," as that term is used in Section 2032A(e)(2) of the Internal Revenue Code, of the former beneficiary of that Scholarshare trust.

SEC. 96. Section 24357.6 of the Revenue and Taxation Code is amended to read:

24357.6. No deduction shall be allowed under this part for an out-of-pocket expenditure made on behalf of an organization described in Section 24359 (other than an organization described in subdivision (e) of Section 23704.5 (relating to churches, etc.)) if the expenditure is made for the purpose of influencing legislation (within the meaning of Section 23701d).

SEC. 97. Section 24410 of the Revenue and Taxation Code is amended to read:

24410. (a) Dividends received by a corporation commercially domiciled in California during the income year from an insurance company subject to tax imposed by Part 7 (commencing with Section 12001) of this division at the time of the payment of the dividends and at least 80 percent of each class of its stock then being owned by the corporation receiving the dividend.

(b) The deduction under this section shall be limited to that portion of the dividends received which are determined to be paid from income from California sources determined pursuant to subdivision (c).

(c) Dividends paid from California sources shall be determined by multiplying the amount of the dividends by an apportionment factor equal to the ratio of gross income from California sources to all gross income of the company. Gross income from California sources equals total gross income less dividends from other insurance companies multiplied by the average of the following three factors:

(1) A gross receipts factor, the denominator of which shall include all receipts, other than dividends from another insurance company, regardless of the nature or source from which derived. The numerator of which shall include all gross receipts, other than dividends from another insurance company, derived from or attributable to this state. With respect to premiums, only receipts which were subject to tax under Part 7 (commencing with Section 12001) of this division, shall be included in the numerator, and with respect to income from intangibles they shall be attributable to the commercial domicile of the insurance company.

(2) A payroll factor determined under the provisions of the Uniform Division of Income for Tax Purposes Act, Chapter 17, Article 2 of this part.

(3) A property factor, determined under the provisions of the Uniform Division of Income for Tax Purposes Act provided for in Article 2 (commencing with Section 25120) of Chapter 17 of this part, provided that for the purposes of this paragraph the property factor shall include all intangible investment property, which intangible property shall be allocated to the commercial domicile of that insurance company.

(4) Plus the portion of the dividends received from another insurance company determined to be paid from California source income pursuant to the formula set forth in paragraphs (1) through (3) based upon the receipts, payroll and property of that other insurance company.

(d) The insurance company from which the dividends are received shall furnish that information as the Franchise Tax Board may require to determine the allocation formula and the Franchise Tax Board may adopt those regulations as it deems necessary to effectuate the purpose of this section.

Nothing in this section shall be construed to limit or affect in any manner any other provisions of this part.

SEC. 97.5. Section 24410 of the Revenue and Taxation Code is amended to read:

24410. (a) Dividends received by a corporation during the income year from an insurance company subject to tax imposed by Part 7 (commencing with Section 12001) at the time of the payment of the dividends and at least 80 percent of each class of its stock then being owned by the corporation receiving the dividend.

(b) The deduction under this section shall be limited to that portion of the dividends received which are determined to be paid from income from California sources determined pursuant to subdivision (c).

(c) Dividends paid from California sources shall be determined by multiplying the amount of the dividends by an apportionment factor equal to the ratio of gross income from California sources to all gross income of the company. Gross income from California sources equals total gross income less dividends from other insurance companies multiplied by the average of the following three factors:

(1) A gross receipts factor, the denominator of which shall include all receipts, other than dividends from another insurance company, regardless of the nature or source from which derived. The numerator of which shall include all gross receipts, other than dividends from another insurance company, derived from or attributable to this state. With respect to premiums, only receipts which were subject to tax under Part 7 (commencing with Section 12001) shall be included in the numerator, and with respect to income from intangibles they shall be attributable to the commercial domicile of the insurance company.

(2) A payroll factor determined under the provisions of the Uniform Division of Income for Tax Purposes Act (Article 2 (commencing with Section 25120) of Chapter 17).

(3) A property factor, determined under the provisions of the Uniform Division of Income for Tax Purposes Act (Article 2 (commencing with Section 25120) of Chapter 17), provided that for the purposes of this paragraph the property factor shall include all intangible investment property, which intangible property shall be allocated to the commercial domicile of the insurance company.

(4) Plus the portion of the dividends received from another insurance company determined to be paid from California source income pursuant to the formula set forth in paragraphs (1) to (3), inclusive, based upon the receipts, payroll and property of that other insurance company.

(d) The insurance company from which the dividends are received shall furnish any information as the Franchise Tax Board may require to determine the allocation formula and the Franchise Tax Board may adopt any regulations as it deems necessary to effectuate the purpose of this section.

(e) Section 24425 shall not apply to any expense that is related to dividends that are deductible under subdivision (a).

(f) Nothing in this section shall be construed to limit or affect in any manner any other provisions of this part.

SEC. 98. Section 24416.2 of the Revenue and Taxation Code is amended to read:

24416.2. (a) The term "qualified taxpayer" as used in Section 24416.1 includes a corporation engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code. For purposes of this subdivision, all of the following shall apply:

(1) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this subdivision as follows:

(i) Loss shall be apportioned to the enterprise zone by multiplying total loss from the business by a fraction, the numerator of which is

the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The enterprise zone" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the enterprise zone as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(C) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the enterprise zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the enterprise zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this subdivision as follows:

(i) Business income shall be apportioned to the enterprise zone by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this clause:

(I) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the enterprise zone during the income year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(II) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(ii) If a loss carryover is allowable pursuant to this section for any income year after the enterprise zone designation has expired, the enterprise zone shall be deemed to remain in existence for purposes of computing the limitation set forth in subparagraph (B) and allowing a net operating loss deduction.

(D) "Enterprise zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) The changes made to this subdivision by the act adding this paragraph shall apply to income years beginning on or after January 1, 1998.

(b) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the original return filed for each year the section which applies to that taxpayer with respect to that net operating loss. If the

taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to qualify under this section and either Section 24416.4, 24416.5, or 24416.6 as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) Notwithstanding Section 24416, the amount of the loss determined under this section, or Section 24416.4, 24416.5, or 24416.6 shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (b) shall be included in the election under Section 24416.1.

SEC. 99. Section 24416.5 of the Revenue and Taxation Code is amended to read:

24416.5. (a) For each income year beginning on or after January 1, 1995, the term "qualified taxpayer" as used in Section 24416.1 includes a taxpayer engaged in the conduct of a trade or business within a LAMBRA. For purposes of this subdivision, all of the following shall apply:

(1) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following income year that ends before the LAMBRA expiration date or to each of the 15 income years following the income year of loss, if longer.

(2) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(3) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(4) "Taxpayer" means a bank or corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state. For purposes of this paragraph, all of the following shall apply:

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their

LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net increase in jobs in the state, and if one or more full-time employees are employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(5) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) Loss shall be apportioned to a LAMBRA by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is 2.

(B) "The LAMBRA" shall be substituted for "this state."

(6) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA.

(7) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the LAMBRA. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the LAMBRA in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to a LAMBRA by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this clause:

(i) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the LAMBRA during the income year, and the denominator of which is the average value of all the

taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(ii) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the LAMBRA during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(B) If a loss carryover is allowable pursuant to this section for any income year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing the limitation specified in subparagraph (D) and allowing a net operating loss deduction.

(8) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(b) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the original return filed for each year the section that applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to qualify under this section and either Section 24416.2, 24416.4, or 24416.6 as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) Notwithstanding Section 24416, the amount of the loss determined under this section or Section 24416.2, 24416.4, or 24416.6 shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (b) shall be included in the election under Section 24416.1.

(e) This section shall apply to income years beginning on and after January 1, 1998.

SEC. 100. Section 24436.5 of the Revenue and Taxation Code is amended to read:

24436.5. (a) No deduction shall be allowed for interest, depreciation, taxes, or amortization paid or incurred in the income year under Section 24343, 24344, 24345, or 24349, with respect to substandard housing located in this state, except as provided in subdivision (e).

(b) "Substandard housing" means occupied dwellings from which the taxpayer derives rental income or unoccupied or abandoned dwellings for which both of the following apply:

(1) Either of the following occurs:

(A) For occupied dwellings from which the taxpayer derives rental income, a state or local government regulatory agency has determined that the housing violates state law or local codes dealing with health, safety, or building.

(B) For dwellings that are unoccupied or abandoned for at least 90 days, a state or local government regulatory agency has cited the housing for conditions that constitute a serious violation of state law or local codes dealing with health, safety, or building, and that constitute a threat to public health and safety.

(2) Either of the following occurs:

(A) After written notice of violation by the regulatory agency, specifying the applicability of this section, the housing has not been repaired or brought to a condition of compliance within six months after the date of the notice or the time prescribed in the notice, whichever period is later.

(B) Good faith efforts for compliance have not been commenced, as determined by the regulatory agency.

"Substandard housing" also means employee housing that has not, within 30 days of the date of the written notice of violation or the date for compliance prescribed in the written notice of violation, been brought into compliance with the conditions stated in the written notice of violation of the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code) issued by the enforcement agency that specifies the application of this section. The regulatory agency may, for good cause shown, extend the compliance date prescribed in a violation notice.

(c) (1) When the period specified in paragraph (2) of subdivision (b) has expired without compliance, the government regulatory agency shall mail to the taxpayer a notice of noncompliance. The notice of noncompliance shall be in a form and shall include information prescribed by the Franchise Tax Board, shall be mailed by certified mail to the taxpayer at his or her last known address, and shall advise the taxpayer of (A) an intent to notify the Franchise Tax Board of the noncompliance within 10 days unless an appeal is filed, (B) where an appeal may be filed, and (C) a general description of the tax consequences of that filing with the Franchise Tax Board. Appeals shall be made to the same body and in the same manner as appeals from other actions of the regulatory agency. If no appeal is made within 10 days or if after disposition of the appeal the regulatory agency is sustained, the regulatory agency shall notify, in writing, the Franchise Tax Board of the noncompliance.

(2) The notice of noncompliance shall contain the legal description or the lot and block numbers of the real property, the assessor's parcel number, and the name of the owner of record as shown on the latest equalized assessment roll. In addition, the regulatory agency shall, at the same time as notification of the notice of noncompliance is sent to the Franchise Tax Board, record a copy of the notice of noncompliance in the office of the recorder for the county in which the substandard housing is located that includes a statement of tax consequences that may be determined by the Franchise Tax Board. However, the failure to record a notice with the

county recorder does not relieve the liability of any taxpayer nor does it create any liability on the part of the regulatory agency.

(3) The regulatory agency may charge the taxpayer a fee in an amount not to exceed the regulatory agency's costs incurred in recording any notice of noncompliance or issuing any release of that notice. The notice of compliance shall be recorded and shall serve to expunge the notice of noncompliance. The notice of compliance shall contain the same recording information required for the notice of noncompliance. No deduction by the taxpayer, or any other taxpayer who obtains title to the property subsequent to the recordation of the notice of noncompliance, shall be allowed for the items provided in subdivision (a) from the date of the notice of noncompliance until the date the regulatory agency determines that the substandard housing has been brought to a condition of compliance. The regulatory agency shall mail to the Franchise Tax Board and the taxpayer a notice of compliance, which notice shall be in the form and include the information prescribed by the Franchise Tax Board. In the event the period of noncompliance does not cover an entire income year, the deductions shall be denied at the rate of $^1/_{12}$ for each full month during the period of noncompliance.

(4) If the property is owned by more than one owner or the recorded title is in the name of a fictitious owner, the notice requirements provided in subdivision (b) and this subdivision shall be satisfied for each owner if the notices are mailed to one owner or to the fictitious name owner at the address appearing on the latest available property tax bill. However, notices made pursuant to this subdivision shall not relieve the regulatory agency from furnishing taxpayer identification information required to implement this section to the Franchise Tax Board.

(d) For the purposes of this section, a notice of noncompliance shall not be mailed by the regulatory agency to the Franchise Tax Board if any of the following occur:

(1) The housing was rendered substandard solely by reason of earthquake, flood or other natural disaster except where the condition remains for more than three years after the disaster.

(2) The owner of the substandard housing has secured financing to bring the housing into compliance with those laws or codes that have been violated, causing the housing to be classified as substandard, and has commenced repairs or other work necessary to bring the housing into compliance.

(3) The owner of substandard housing that is not within the meaning of housing accommodation, as defined in subdivision (d) of Section 35805 of the Health and Safety Code, has done both of the following:

(A) Attempted to secure financing to bring the housing into compliance with those laws or codes that have been violated, causing the housing to be classified as substandard.

(B) Been denied that financing solely because the housing is located in a neighborhood or geographical area in which financial institutions do not provide financing for rehabilitation of any of that type of housing.

(e) The provisions of this section do not apply to deductions from income derived from property rendered substandard solely by reason of a change in applicable state or local housing standards unless those violations cause substantial danger to the occupants of the property, as determined by the regulatory agency which has served notice of violation pursuant to subdivision (b).

(f) The owner of substandard housing found to be in noncompliance shall, upon total or partial divestiture of interest in the property, immediately notify the regulatory agency of the name and address of the person or persons to whom the property has been sold or otherwise transferred and the date of the sale or transference.

(g) By July 1 of each year, the regulatory agency shall report to the appropriate legislative body of its jurisdiction all of the following information, for the preceding calendar year, regarding its activities to secure code enforcement, which shall be public information:

(1) The number of written notices of violation issued for substandard housing under subdivision (b).

(2) The number of violations complied with within the period prescribed in subdivision (b).

(3) The number of notices of noncompliance issued pursuant to subdivision (c).

(4) The number of appeals from those notices pursuant to subdivision (c).

(5) The number of successful appeals by owners.

(6) The number of notices of noncompliance mailed to the Franchise Tax Board pursuant to subdivision (c).

(7) The number of cases in which a notice of noncompliance was not sent pursuant to the provisions of subdivision (d).

(8) The number of extensions for compliance granted pursuant to subdivision (b) and the mean average length of the extensions.

(9) The mean average length of time from the issuance of a notice of violation to the mailing of a notice of noncompliance to the Franchise Tax Board where the notice is actually sent to the Franchise Tax Board.

(10) The number of cases where compliance is achieved after a notice of noncompliance has been mailed to the Franchise Tax Board.

(11) The number of instances of disallowance of tax deductions by the Franchise Tax Board resulting from referrals made by the regulatory agency. This information may be filed in a supplemental report in succeeding years as it becomes available.

(h) The provisions of this section relating to substandard housing consisting of abandoned or unoccupied dwellings do not apply to any lender engaging in a "federally related transaction," as defined in Section 11302 of the Business and Professions Code, who acquires title

through judicial or nonjudicial foreclosure, or accepts a deed in lieu of foreclosure. The exception provided in this subdivision covers only substandard housing consisting of abandoned or unoccupied dwellings involved in the federally related transaction.

SEC. 101. Section 25106 of the Revenue and Taxation Code is amended to read:

25106. In any case in which the tax of a corporation is or has been determined under this chapter with reference to the income and apportionment factors of another corporation with which it is doing or has done a unitary business, all dividends paid by one to another of those corporations shall, to the extent those dividends are paid out of the income previously described of the unitary business, be eliminated from the income of the recipient and, except for purposes of applying Section 24345, shall not be taken into account under Section 24344 or in any other manner in determining the tax of any member of the unitary group.

SEC. 102. Section 25114 of the Revenue and Taxation Code is amended to read:

25114. (a) The Franchise Tax Board, for purposes of administering the provisions of this article, shall examine the returns filed by taxpayers subject to these provisions. Where this examination reveals potential noncompliance, a detailed examination shall be made, notwithstanding the potential net revenue benefit to the state, unless the taxpayer is being examined by the Internal Revenue Service for the same year or years on the same issues.

(b) (1) In any case of two or more organizations, trades, or businesses (whether or not organized in the United States and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Franchise Tax Board may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among these organizations, trades, or businesses, if the board determines that the distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of these organizations, trades, or businesses. In the case of any transfer (or license) of intangible property (within the meaning of Section 936(h)(3)(B) of the Internal Revenue Code), the income with respect to that transfer or license shall be commensurate with the income attributable to the intangible property.

(2) In making distributions, apportionments, and allocations under this section, the Franchise Tax Board shall generally follow the rules, regulations, and procedures of the Internal Revenue Service in making audits under Section 482 of the Internal Revenue Code. Any of these rules, regulations, and procedures adopted by the Franchise Tax Board shall not be subject to review by the Office of Administrative Law.

(3) If the Internal Revenue Service has conducted a detailed audit pursuant to Section 482 of the Internal Revenue Code or Subchapter

N of Chapter 1 of Subtitle A of the Internal Revenue Code and has made adjustments pursuant to those provisions, it shall be presumed, to the extent that the provisions relate to the determination of the amount of income and factors required to be taken into account pursuant to Section 25110, that no further adjustments are necessary for this state's purposes. If the Internal Revenue Service has conducted a detailed audit pursuant to Section 482 of the Internal Revenue Code or Subchapter N of Chapter 1 of Subtitle A of the Internal Revenue Code and has made or proposed no adjustments to the transactions examined, it shall be presumed, to the extent that the provisions relate to the determination of the amount of income and factors required to be taken into account pursuant to Section 25110, that no adjustment is necessary for this state's purposes. These presumptions apply to all Internal Revenue Service audit determinations, including determinations made by the Appeals and Competent Authority. These presumptions shall be overcome if the Franchise Tax Board or the taxpayer demonstrates that an adjustment or a failure to make an adjustment was erroneous, if it demonstrates that the results of such an adjustment would produce a minimal tax change for federal purposes because of correlative or offsetting adjustments or for other reasons, or if substantially the same federal tax result was obtained under other sections of the Internal Revenue Code. No inference shall be drawn from an Internal Revenue Service failure to audit international transactions pursuant to Section 482 of the Internal Revenue Code or Subchapter N of Chapter 1 of Subtitle A of the Internal Revenue Code and it shall not be presumed that any of those transactions were correctly reported.

SEC. 102.5. Section 25114 of the Revenue and Taxation Code is amended to read:

25114. (a) The Franchise Tax Board, for purposes of administering the provisions of this article, shall examine the returns filed by taxpayers subject to these provisions. Where this examination reveals potential noncompliance, a detailed examination shall be made, notwithstanding the potential net revenue benefit to the state, unless the taxpayer is being examined by the Internal Revenue Service for the same year or years on the same issues.

(b) (1) In any case of two or more organizations, trades, or businesses (whether or not organized in the United States and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Franchise Tax Board may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among these organizations, trades, or businesses, if the board determines that the distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of these organizations, trades, or businesses. In the case of any transfer (or license) of intangible property (within the meaning of Section 936(h)(3)(B) of

the Internal Revenue Code), the income with respect to that transfer or license shall be commensurate with the income attributable to the intangible property.

(2) In making distributions, apportionments, and allocations under this section, the Franchise Tax Board shall generally follow the rules, regulations, and procedures of the Internal Revenue Service in making audits under Section 482 of the Internal Revenue Code. Any of these rules, regulations, and procedures adopted by the Franchise Tax Board shall not be subject to review by the Office of Administrative Law.

(3) If the Internal Revenue Service has conducted a detailed audit pursuant to Section 482 of the Internal Revenue Code or Subchapter N of Chapter 1 of Subtitle A of the Internal Revenue Code and has made adjustments pursuant to those provisions, it shall be presumed, to the extent the provisions relate to the determination of the amount of income and factors required to be taken into account pursuant to Section 25110, that no further adjustments are necessary for this state's purposes. If the Internal Revenue Service has conducted a detailed audit pursuant to Section 482 of the Internal Revenue Code or Subchapter N of Chapter 1 of Subtitle A of the Internal Revenue Code and has made or proposed no adjustments to the transactions examined, it shall be presumed, to the extent the provisions relate to the determination of the amount of income and factors required to be taken into account pursuant to Section 25110, that no adjustment is necessary for this state's purposes. These presumptions shall apply to all Internal Revenue Service audit determinations, including determinations made by Appeals and Competent Authority. These presumptions shall be overcome if the Franchise Tax Board or the taxpayer demonstrates that an adjustment or a failure to make an adjustment was erroneous, if it demonstrates that the results of such an adjustment would produce a minimal tax change for federal purposes because of correlative or offsetting adjustments or for other reasons, or if substantially the same federal tax result was obtained under other sections of the Internal Revenue Code. No inference shall be drawn from an Internal Revenue Service failure to audit international transactions pursuant to Section 482 of the Internal Revenue Code or Subchapter N of Chapter 1 of Subtitle A of the Internal Revenue Code and it shall not be presumed that any of those transactions were correctly reported.

(4) Notwithstanding subdivision (a), to the extent that a corporation's federal tax has been properly determined by reference to the profit split method under Section 936(h)(5)(C)(ii) of the Internal Revenue Code, the allocation of combined taxable income under the profit split method shall be presumed to be a proper allocation under the principles of Section 482 of the Internal Revenue Code. This presumption may be rebutted. For purposes of this paragraph, "combined taxable income" shall be computed in

accordance with Section 936(h)(5)(C)(ii) of the Internal Revenue Code.

SEC. 103. Section 1185 of the Unemployment Insurance Code is amended to read:

1185. The director, in collaboration with the Franchise Tax Board, shall do all of the following:

(a) Identify taxpayers who have overpaid disability insurance contributions in any or all tax years from January 1, 1993, to December 31, 1995, inclusive, and have not received refunds due to them. For purposes of this subdivision, "taxpayers" means any individual who filed a FTB Form 540A or 540EZ.

(b) (1) By October 15, 1997, credit the taxpayers identified in this subdivision with the amount of any overpaid disability insurance pursuant to Section 17061 of the Revenue and Taxation Code. If the amount credited pursuant to this subdivision exceeds any amount then due from the taxpayer, the difference shall be refunded to the taxpayer. For taxable years 1993, 1994, and 1995, inclusive, interest, at the rate established pursuant to Section 19521 of the Revenue and Taxation Code, shall accrue from April 15 of the tax year following the overpayment to a date preceding the date of the refund warrant by not more than 30 days.

(2) Identify and refund overpayments, with interest, to those taxpayers who have overpaid disability insurance contributions, and who have not claimed refunds due to them.

(3) Interest on overpayments of disability insurance contributions shall be allowed and paid pursuant to Sections 19340 and 19341 of the Revenue and Taxation Code.

(4) For purposes of Section 19340 of the Revenue and Taxation Code, any overpayment of disability insurance contributions shall be deemed to have been paid on the last day prescribed for filing the return under Article 1 (commencing with Section 18501) or Article 2 (commencing with Section 18601) of Chapter 2 of Part 10.2 of the Revenue and Taxation Code without regard to any extension of time for filing the return with respect to which the overpayment is allowable as a credit under Section 17061 of the Revenue and Taxation Code.

SEC. 104. The amendments made by this act to Sections 17053.49 and 23649 of the Revenue and Taxation Code apply to taxable or income years beginning on or after January 1, 1998.

SEC. 105. The amendments made by this act to Sections 18622, 19059, 19060, and 19311 of the Revenue and Taxation Code apply to federal determinations that become final (as defined by this act) on or after January 1, 2000.

SEC. 106. Sections 6 and 84 of this bill incorporate amendments to Sections 17053.49 and 23649 of the Revenue and Taxation Code, respectively, proposed by this bill and AB 473. If both this bill and AB 473 are enacted and each bill amends Sections 17053.49 and 23649 of the Revenue and Taxation Code, then Sections 17053.49 and 23649 of

the Revenue and Taxation Code, as amended by this bill, shall remain operative only until the operative date of AB 473, at which time Sections 17053.49 and 23649 of the Revenue and Taxation Code, as amended by AB 473, shall become operative.

SEC. 107. (a) The amendments to subdivision (a) of Section 24410 of the Revenue and Taxation Code made by this act shall apply to all income years for which the Franchise Tax Board may propose an assessment or allow a claim for refund.

(b) The Legislature finds and declares that the amendments to subdivision (a) of Section 24410 of the Revenue and Taxation Code made by this act fulfill a statewide public purpose because they revise a potentially unconstitutional provision contained in the Bank and Corporation Tax Law.

(c) Section 97.5 of this bill incorporates amendments to Section 24410 of the Revenue and Taxation Code proposed by both this bill and SB 1125. 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 24410 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1125, in which case Section 24410 of the Revenue and Taxation Code, as amended by SB 1125, shall remain operative only until the operative date of this bill, at which time Section 97.5 of this bill shall become operative and Section 97 of this bill shall not become operative.

SEC. 108. (a) The amendments made by this act to paragraph (3) of subdivision (b) of Section 25114 of the Revenue and Taxation Code do not constitute a change in, but are declaratory of, existing law.

(b) Section 102.5 of this bill incorporates amendments to Section 25114 of the Revenue and Taxation Code proposed by both this bill and AB 1208. 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 25114 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 1208, in which case Section 25114 of the Revenue and Taxation Code, as amended by AB 1208, shall remain operative only until the operative date of this bill, at which time Section 102.5 of this bill shall become operative and Section 102 shall not become operative.

(c) If Section 102.5 of this bill becomes operative, then the amendments made by this act adding paragraph (4) to subdivision (b) of Section 25114 of the Revenue and Taxation Code shall become operative on January 1, 1999, and shall apply to all income years for which the Franchise Tax Board may propose an assessment or allow a claim for refund.

SEC. 109. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.
